from business or profession to be the sum of, to wit, $9,312.95, which said sum of, to wit, $9,312.95, was shown by said defendant on the face of his said return for the said calendar year 1928 under the caption "Income" and under the specific item "Income from business or profession"; that the said defendant, in making and filing his said return for the calendar year 1928, as aforesaid, included in salaries as shown by schedule A (income from business or profession) of said return the sum of, to wit, $12,000.00,
6 alleged by the defendant to have been moneys paid out by said defendant during said calendar year 1928 to a person or persons unknown to said grand jurors; that afterwards, on, to wit, December 23, 1929; in pursuance of a written designation of Robert H. Lucas, Commissioner of Internal Revenue for the United States of America, giving him authority so to do, John R. Kirk, United States internal revenue agent in charge at Springfield, Illinois, issued a written summons to said defendant, Harry Murdock, and said written summons was regularly served personally on said defendant on, to wit, December 27, 1929, requiring him, the said defendant, to appear before the said United States internal revenue agent in charge at his office in room 303½, East Monroe Street, at Springfield aforesaid, on December 30, 1929, to give testimony and supply information for and to said Commissioner concerning said payment of said moneys in the sum of, to wit, $12,000.00, by said defendant, and concerning the name and address or names and addresses of the recipient or recipients of such payment, for the purpose of the computation, assessment, and collection of income taxes imposed upon and due to the United States from such other person or persons by an act of Congress, approved May 29, 1928, entitled "An act to reduce and equalize taxation, provide revenue, and for other purposes", which said act of Congress is known as the Revenue Act of 1928; that on, to wit, January 9, 1930, the said defendant, Harry Murdock, did appear before said United States internal revenue agent in charge at the city of Edwardsville, in the State of Illinois, in pursuance of said summons, but then and there refused to give testimony and supply information; that because he had full knowledge and information concerning said matter of said payment of said sum of, to wit, $12,000.00, said defendant was under a duty to appear before said John R. Kirk and give testimony and supply information concerning same, which said testimony and information is material for the purpose of the computation, assessment, and collection of income taxes; and that said defendant, notwithstanding his said duty and although he then and there was required, under the provisions of said act of Congress, so to comply with said summons and give such testimony and information to said John R. Kirk, unlawfully did willfully fail to give such testimony and supply such information concerning said matter of said payment of said sum of, to wit, $12,000.00, to wit, on said January 9, 1930, in said Southern Division of said

Southern District of Illinois, and in said Eighth Internal Revenue Collection District of Illinois, or at any other time or
7 place; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

WALTER M. PROVINE,
United States Attorney.

(See back of Indictments for indorsements.)

(Endorsed:) No. 1680. United States District Court Southern District of Illinois Southern Division. The United States of America vs. Harry Murdock. Indictment. Section 1114 (a) of the Revenue Act of 1926, and Section 146 (a) the Revenue Act of 1928. A true bill; Hinman F. Strother, Foreman. Filed Jany 23, 1930. S. T. Burnett, Clerk. Bail, $5,000—B. W. Ord Walter M. Provine, U.S. Atty.

In United States District Court

Demurrer to indictment

Filed February 6, 1930

And now comes Harry Murdock, above-named defendant, in his own proper person, and also by the undersigned attorneys, into court, and, having heard the said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that he, the said Harry Murdock, is not bound by law to answer the same. And, as particular specifications in support but not in limitation of this general demurrer, defendant cites the following:

1. The said indictment, and each count thereof, violates the sixth amendment to the constitution of the United States in that it fails to inform the defendant of the nature and cause of the accusation.

2. The indictment, and each count thereof, fails to inform the defendant of the nature and cause of the accusation in this,
8 that it wholly fails and omits to recite or aver what, if any, information was requested of defendant, and what, if any, questions were propounded to defendant.

3. Inasmuch as each count of the indictment fails and omits to set forth the questions, if any, that were asked of defendant by John R. Kirk, United States internal revenue agent, or the answers, if any, that were given by the defendant, the allegation contained in each count that defendant "unlawfully did willfully fail to give such testimony" is a mere conclusion that this defendant is not, by law, required to answer.

4. The indictment, and each count thereof, is fatally defective because it fails to aver whether the defendant, is failing and refusing to answers question put to him by John R. Kirk, United States

internal revenue agent, stood upon his rights as guaranteed by the fifth amendment to the constitution of the United States and stated that he could not answer such questions because his answer might incriminate him or subject him to criminal prosecution for violation of a penal statute of the United States or of the State of Illinois.

5. The indictment, and each count thereof, is otherwise vague, ambiguous, argumentative, indefinite, and uncertain.

And this the defendant is ready to verify; wherefore, for want of a sufficient indictment in this behalf, the said Harry Murdock prays judgment, and that by the Court he may be dismissed and discharged from the said premises in the said indictment specified.

MOORE & FITCH.
KEEFE, BANDY & LISTEMAN,
Attorneys for Defendant.

[File endorsement omitted.]

9 In United States District Court

Additional special ground for demurrer

Filed February 19, 1930

Now comes Harry Murdock, the above-named defendant, by Moore & Fitch, and Keefe, Bandy & Listeman, his attorneys, and assigns the following additional ground of demurrer to the indictment in the above entitled case, and respectfully asks this honorable court to consider this as one of the assignments or special grounds of the demurrer to the indictment, heretofore filed by this defendant:

The indictment is fatally defective and insufficient, because it shows, upon its face, by its averments, that Robert H. Lucas, Commissioner of Internal Revenue for the United States of America, and John R. Kirk, internal revenue agent in charge at Springfield, Illinois, did not petition and cause the United States District Court for the Southern District of Illinois, Southern Division, by appropriate process, to compel the attendance of defendant before the said John R. Kirk, United States internal revenue agent in charge at Springfield, Illinois, for the purpose of supplying information, as required by the provisions of section 1122-A of the Revenue Act of 1926, which is as follows:

"If any person is summoned under this Act to appear, to testify, or to produce books, papers, or other data, the District Court of the United States for the District in which such person resides shall have jurisdiction, by appropriate process, to compel such attendance, testimony, or production of books, papers, or other data."

By failing and omitting to aver that the Commissioner of Internal Revenue for the United States of America, and the United States internal revenue agent in charge at Springfield, Illinois, followed the procedure required by the foregoing statute, which is in full

force and effect, the indictment shows, upon its face, that the representatives of the Commissioner of Internal Revenue have determined the questions of law involved in this case, and have determined for themselves, measured by their own ideas, the fact that defendant has refused to give information which the United States internal revenue agent in charge at Springfield, Illinois, thinks he is entitled to receive.

The procedure which was followed, as shown by the averments in both counts of this indictment, constitutes an erroneous and mistaken conception of the law applicable to this case.

The averments of the indictment, in showing the failure of the Internal Revenue Department to follow the procedure prescribed by law, show that the defendant has been deprived of substantial rights, among them, the right to a judicial determination of whether he is privileged to refuse to give the information sought by the Commissioner of Internal Revenue, because of the fact that giving such information would incriminate him.

MOORE & FITCH,
KEEFE, BANDY & LISTEMAN,
Attorneys for Defendant.

[File endorsement omitted.]

In United States District Court

Demurrer to indictment

Filed January 11, 1932

And now comes Harry Murdock, above-named defendant, in his own proper person, and by Edmund Burke and H. J. Bandy, his undersigned attorneys, into open court, and having heard the said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that he, the said Harry Murdock, is not bound by law to answer the same.

And, as particular specifications in support, by not in limitation, of this general demurrer, defendant assigns the following:

1. Section 1114-A of the Revenue Act of 1926, upon which count 1 of the indictment is predicated, and section 146-A of the Revenue Act of 1928, upon which count 2 of the indictment is based, are invalid and in violation of the fifth amendment to the Constitution of the United States because these sections leave the defendant subject to prosecution after he answers incriminating questions propounded to him by the internal revenue agent.

2. Section 1114-A of the Revenue Act of 1926 and section 146-A of the Revenue Act of 1928, upon which acts of Congress the counts of this indictment are based, are invalid and in violation of the fifth amendment to the Constitution of the United States because they do not give complete protection from the perils against which the said fifth amendment was designed to guard.

3. The fifth amendment to the Constitution of the United States provides that "No person shall be compelled in any criminal case to be a witness against himself." Section 1114-A of the Revenue Act of 1926 and section 146-A of the Revenue Act of 1928 violate this provision of the fifth amendment to the Constitution because they do not afford complete immunity against future prosecution for any offenses revealed by answers given by the defendant to the questions that were asked of him when he was subpoenaed to appear before the internal revenue agent as alleged in counts 1 and 2 of the indictment.

4. The said indictment, and each count thereof, violates the sixth amendment to the Constitution of the United States, in that it fails to inform the defendant of the nature and cause of the accusation.

5. The indictment, and each count thereof, fails to inform the defendant of the nature and cause of the accusation, in that it wholly fails and omits to aver what, if any, information was requested of defendant and what, if any, questions were propounded to him.

6. The averment contained in each of the counts of the indictment that the defendant "unlawfully did willfully fail to give such testimony" is a mere conclusion of the pleader that this defendant is not, by law, required to answer.

7. The indictment is otherwise vague, ambiguous, argumentative, indefinite, and uncertain.

And this the defendant is ready to verify; wherefore, for want of a sufficient indictment in this behalf, the said Harry Murdock prays judgment and that, by the court, he may be dismissed and discharged from the said premises in the said indictment specified.

HAROLD J. BANDY,
EDMUND BURKE,
Attorneys for Defendant.

[File endorsement omitted.]

In United States District Court

12 *Minute entry of arraignment and plea*

January 11, 1932

This cause coming on this day to be heard upon the demurrer of the defendant to the indictment herein and the court having heard and duly considered the same, it is ordered that said demurrer be, and is hereby overruled. And the said defendant being arraigned

on the indictment herein for plea thereto, says that he is not guilty as therein charged. Comes now Edmund Burke, Esq., and enters his appearance as attorney for the defendant. It is ordered by the court that the amount of bail herein be, and is hereby fixed at the sum of five thousand dollars. It is further ordered by the court that this case be, and the same is hereby set for trial on Monday, January 25, 1932, at 10 o'clock a.m. at Springfield, in said district.

In United States District Court

Minute entry of trial

January 25, 1932

Comes now the defendant Harry Murdock, in his own proper person and by Messrs. H. J. Bandy and Edmund Burke, his attorneys, and issue now being joined, the following named jurors are tendered and accepted, to wit: Edward Houghton, J. Warner Carlyle,
13 Walter Frey, Louis H. Schwartz, Paul Sargent, Charles W. Routson, John Arnold, Charles Churchman, Martin Maslin, Lowell C. Kraft, Murl Jones and Frank Coughlin, who are duly sworn to well and truly try the issues joined in this case and a true verdict render according to the law and the evidence, and after hearing all the evidence in the case, the arguments of counsel thereon and the instructions of the court, the jury retired in charge of a sworn officer to consider a verdict, and afterwards come into open court and for verdict say, "We, the Jury, find the defendant Harry Murdock, guilty." Thereupon the defendant by his attorneys, in open court entered a motion for a new trial. It is ordered by the court that this cause be, and is hereby, continued to January 29, 1932, and that the bond of said defendant be and remain in full force and effect. It is ordered by the court that during the trial of this case, the jury impaneled and sworn herein be in the custody of the United States marshal and that the marshal furnish the said jury and two bailiffs in charge thereof, with meals and lodging, the cost thereof, to be borne by the United States.

In United States District Court

Judgment

Entered January 29, 1932

Come now the parties to this cause, the United States by Frank K. Lemon, Esq., United States attorney for the Southern District of Illinois and the defendant Harry Murdock, in his own proper person and by Messrs. H. J. Bandy and Edmund Burke, his attorneys, and the court having heard and duly considered the motion

of the defendant for a new trial and being now fully advised in the premises, denied the same, to which ruling of the court the defendant then and there by his attorneys, duly excepted. Thereupon the defendant entered a motion in arrest of judgment and the court having heard and duly considered the same and
14 being now fully advised in the premises, denied the same, to which ruling of the court the defendant then and there by his attorneys duly excepted. Judgment on the verdict.

And the said defendant now being arraigned at the bar of the court for sentence and having nothing further to say why sentence should not be pronounced against him—It is therefore considered and adjudged by the court that the said defendant Harry Murdock for the offense by him committed in manner and form as charged in the said indictment and as found by the jury in this case, be confined in the Springfield City Jail, for a period of one year and to pay fine to the United States in the sum of five thousand dollars together with the costs of this prosecution, amounting to the sum of 50—dollars, that execution issue therefor, and that said defendant stand committed in the said Springfield City Jail, until the amount of said fine and costs shall have been fully paid or until otherwise discharged by due process of law, to which judgment and sentence the defendant then and there by his attorneys, duly excepted.

And it is further ordered by the court that the clerk issue a writ of commitment commanding the Marshal to forthwith take the said Harry Murdock, and deliver him together with a true copy of said writ of commitment to the jailer of the Springfield City Jail.

On motion of the defendant by his attorneys, it is ordered by the court that said defendant have thirty days in which to file his bill of exceptions herein.

15 In United States District Court

Bill of exceptions

Filed February 16, 1932

Appearances: For the United States of America, Frank K. Lemon, Esq., United States attorney; Marks Alexander, Esq., assistant United States attorney. For the defendant, Harold J. Bandy, Esq., Granite City, Ill.; Edmund Burke, Esq., Springfield, Ill.

Be it remembered that heretofore the grand jury of the United States in and for the Southern District of Illinois, Southern Division, did find and return to and before the above-entitled court its indictment against the defendant, Harry Murdock, and that on the 11th day of January, 1932, the demurrer of the said defendant, Harry Murdock, to the indictment herein was overruled by said court, to which ruling defendant then and there excepted.

Thereafter, on the 11th day of January, 1932, defendant being there and then arraigned in person, appeared and pleaded not guilty to said indictment.

Thereafter, on the 25th day of January, 1932, the above cause came on for trial before the Honorable Louis FitzHenry, one of the judges of the said court and a jury duly impaneled, Frank K. Lemon, Esq., United States attorney, and Marks Alexander, Esq., assistant United States attorney, appearing as counsel for the United States, and Harold J. Bandy, Esq., and Edmund Burke, Esq., appearing as counsel for the defendant.

The United States, to maintain its case, offered the following testimony:

Mr. ALEXANDER. The Government offers in evidence the document marked Government Exhibit Number One, and also Government Exhibit Number Two.

Mr. BURKE. Just a moment, if the court please. Now, if the court please, we object to the introduction of these exhibits on the ground that they are not the best evidence, and on the further ground that no foundation has been laid for the introduction of copies of the originals of these exhibits which appear from the certificates to be in the possession of the prosecution.

16 The COURT. Objection overruled. Consider them admitted and read. There is the appropriate and usual certificate there, isn't there?

Mr. ALEXANDER. I think so; they were secured for this purpose in the usual form that we have been using for a long time. It is statutory, I think.

The COURT. Consider them admitted and read

Mr. BURKE. If the Court please, I desire to further object to these exhibits, particularly to the admission in evidence of the certificates, because it states the fact—because it purports to state a fact independent of the certification of the genuineness of the income-tax return filed by Harry Murdock, which could not possibly be proper for that certification. I would like the record to show that further objection to the exhibits.

The COURT. All right; let the record show the additional point. Objection overruled.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

(Which said Government Exhibits Numbers One and Two, so offered and admitted in evidence, are in the words and figures as follows, to wit:)

Government's Exhibit No. One

1/25-32 L. M. J.

UNITED STATES OF AMERICA
(Coat of arms)

TREASURY DEPARTMENT,
Washington, January 21, 1930.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of individual income tax return for 1927, filed by Harry Murdock, Nameoki, Ill., the originals of which are on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary:

F. A. BIRGFELD,
F. A. Birgfeld,
Chief Clerk, Treasury Department.

[SEAL]

Field audit.

17 Individual Income Tax Return

For net incomes from salaries or wages of more than $5,000 or incomes, regardless of amount, from business, profession, rents, or sale of property for calendar year 1927.

File this return with the collector of internal revenue for your district on or before March 15, 1928.

(Print name and address plainly below:)

Name: Harry Murdock.

Street and number, or rural route: Nameoki, Madison County, Ill.
Occupation, profession, or business: Real estate and vending machines.

(Auditor's stamp.)
Audited.
Deficiency tax ---------- $0
Additional penalty ---------- $---
Deficiency interest ---------- $---
Total ---------- $---
Overassessment ---------- $0
Return audited by
F. G. ALLSUP,
Deputy Collector.
List and account No. ----
Date to which int. computed ----.

Do not write in these spaces.
File Code 255.
Serial number 907311.
(Cashier's stamp.)
Paid March 17, 1928.
O. G. MULLINAN,
Collector.
Cash, check, M.O., Cert. of Ind.
First payment, $437.79.
Carded as ----.

1. Are you a citizen or resident of the United States? Yes.
2. If you filed a return for 1926, to what collector's office was it sent? 8th district, Illinois.
3. Is this a joint return of husband and wife? No.
4. State name of husband or wife if a separate return was made and the collector's office where it was sent. ———.
5. Were you married and living with husband or wife on the last day of your taxable year? No.
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? ———.

7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change. ———.

8. How many dependent persons (other than husband or wife) under
.18 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? ———.

Income

Item and instruction no.	Amount received	Expenses paid (explain in schedule F)	
1. Salaries, wages, commissions, etc. (state name and address of person from whom received):			
————	$———	$———	$———
————	———	———	———
————	———	———	———
2. Income from business or profession (from schedule A)			8,229.42
3. Interest on bank deposits, notes, corporation bonds, etc. (except interest upon which a tax was paid at source)			———
(a) Interest on tax-free covenant bonds upon which a tax was paid at source			———
4. Income from partnerships. (State name and address) Maryland Real Estate Co., Nameoki, Ill			3,027.42
(a) Income from fiduciaries. (State name and address)			———
5. Rents and royalties (from schedule B)			978.70
6. Profit from sale of real estate, stocks, bonds. (from schedule C)			2,876.37
7. Dividends on stock of domestic corporations			———
8. Taxable interest on Liberty bonds, etc. (from schedule E)			———
9. Other income (including dividends received on stock of foreign corporations). (State nature of income):			
(a)			———
(b)			———
10. Total income in items 1 to 9			$15,111.91

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Deductions

11. Interest paid	$402.58
12. Taxes paid (Explain in Schedule F)	624.80
13. Losses by fire, storm, etc. (Explain in table on page 2)	———
14. Bad debts. (Explain in schedule F)	———
15. Contributions. (Explain in schedule F)	———
16. Other deductions authorized by law. (Explain in schedule F)	———
17. Total deductions in items 11 to 16	$1,027.38
18. Net income (item 10 minus item 17)	$14,084.53

Computation of tax (see instruction 21)

19. Earned net income (not over $20,000)	$5,000.00
20. Less personal exemption and credit for dependents (see instruction 20)	1,500.00
21. Balance (item 19 minus 20)	$3,500.00
22. Amount taxable at 1½% (not over the first $4,000 of item 21)	$———
23. Amount taxable at 3% (not over the second $4,000 of item 21)	———

24. Amount taxable at 5% (balance over $8,000 of item 21)		
25. Normal tax (1½% of item 22)		$52.50
26. Normal tax (3% of item 23)		
27. Normal tax (5% of item 24)		
28. Surtax on item 19 (see instruction 21)		
29. Tax on earned net income (total of items 25, 26, 27, and 28)		$52.50
30. Credit of 25% of item 29 (not over 25% of items 28, 42, 43, and 44)		$13.12
31. Net income (item 18 above)		$14,084.53
20 32. Less dividends (item 7 above)	$	
33. Interest on Liberty bonds, etc. (item 8)		
34. Personal exemption	1,500.00	
35. Credit for dependents		
36. Total of items 32, 33, 34, and 35		1,500.00
37. Balance (item 31 minus 36)		$12,584.53
38. Amount taxable at 1½% (not over the first $4,000 of Item 37)		4,000.00
39. Balance (item 37 minus 38)		$8,584.53
40. Amount taxable at 3% (not over the second $4,000 of item 37)		4,000.00
41. Amount taxable at 5% (balance over $8,000 of item 37)		$4,584.53
42. Normal tax (1½% of item 38)		60.00
43. Normal tax (3% of item 40)		120.00
44. Normal tax (5% of item 41)		229.22
45. Surtax on item 18 (see instruction 21)		41.69
46. Tax on net income (total of items 42, 43, 44, and 45)		$450.91
47. Less credit of 25% of tax on earned net income (item 30)		13.12
48. Balance (item 46 minus 47)		$437.79
49. Adjustment for capital gain or loss (12½% of column 9, Schedule D)		
50. Total tax (total of or difference between items 48 and 49)		$
51. Less income tax paid at source		
52. Income and profits taxes paid to a foreign country or United States possession		
53. Balance of tax (item 50 minus items 51 and 52)		$437.79

21 *Affidavit*

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1926, and the Regulations issued under authority thereof.

(If return is made by agent, the reason therefor must be stated on this line)

HARRY MURDOCK.
(Signature of individual or agent)

(Address of agent)

Sworn to and subscribed before me this 15th day of March, 1928.

HERMAN F. KREIPKE.
(Signature of officer administering oath)

[NOTARIAL SEAL] *Notary Public.*
(Title)

An amended return must be marked "Amended" at top of return checks and drafts will be accepted only if payable at par.

SCHEDULE A. *Income from Business or Profession (See Instruction 2)*

1. Total Receipts from business or profession (state kind of business)		$24,091.82

COST OF GOODS SOLD

2. Labor	$	
3. Material and supplies		
4. Merchandise bought for sale		
5. Other costs (itemize below or on separate sheet)		
6. Plus inventory at beginning of year		
7. Total (lines 2 to 6, inclusive)		
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 minus line 8)		

NOTE.—Do not deduct here or elsewhere compensation for your services.

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OTHER BUSINESS DEDUCTIONS

10. Salaries, exclusive of "Labor," reported on line 2, and exclusive of compensation for your services	$7,820.00	
11. Interest on business indebtedness to others		
12. Taxes on business and business property		
13. Losses by fire, storm, etc. (explain in table provided therefore at foot of page)		
14. Bad debts arising from sales or services		
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)	3,600.00	
16. Rent, repairs, and other expenses (itemized below or on separate sheet)	4,442.40	
17. Total (lines 10 to 16, inclusive)	15,862.40	
18. Total Deductions (line 9 plus line 17)		$15,862.40
19. Net Profit (line 1 minus line 18) (enter as item 2)		8,229.42

Explanation of deductions claimed on lines 5 and 16, gasoline and oil for 3 cars, $1160.20; repairs to vending machines, $2,436.80; miscellaneous, $726.80; telephones, $118.60.

23 SCHEDULE B.—*Income from rents and royalties* (see instruction 5)

1. Kind of property	2. Amount received	3. Cost	4. Value as of Mar. 1, 1913	5. Depreciation (explain in table at foot of page)	6. Repairs	7. Other expenses (itemize below)	8. Net profit (enter as item 5)
Rental income	$850.00	$7,400.00		$370.00	$32.20	$42.80	$405.00
Rental income	1,060.00	8,000.00		240.00	224.20	22.10	573.70
							$978.70

Explanation of deductions claimed in Column 7 Insurance $42.80-$22.10

SCHEDULE C.—*Profit from sale of real estate, stocks, bonds, etc.* (see instruction 6)

1. Kind of property	2. Date acquired	3. Amount received	4. Depreciation allowable since acquisition	5. Cost	6. Value as of Mar. 1, 1913	7. Subsequent improvements	8. Net profit (enter as item 6)
Vacant lot	1926	$5,000.00		$3,521.00			$1,479.00
Completed sales—							
Houses and lots	1927	13,620.62		12,491.01			1,129.61
Installment sales	1927	50,798.89		49,622.32			267.76
		Sale price	Payments rec., 1927—$3,265.39				$2,876.37

State how property was acquired. Installment sales. Price of sale, $50,798.85. Cost, $46,622.32—Profit, $4,176.57. Payments 1927—$3,265.39 = 08.2%

24 SCHEDULE D.—*Capital net gain or loss from sale of assets held more than two years* (see instruction 6a)

1. Kind of property	2. Date acquired			3. Date sold			4. Amount received	5. Depreciation allowable since acquisition	6. Cost	7. Value as of Mar. 1, 1913	8. Subsequent improvements, and capital deductions	9. Net gain or loss (enter 12½% as item 49)
	Mo.	Day	Year	Mo.	Day	Year						
							$	$	$	$	$	$

State how property was acquired

SCHEDULE E.—*Interest on Liberty bonds and other obligations or securities* (see instruction 8)

1. Obligations or securities	2. Interest received or accrued	3. Amount owned	4. Principal amount exempt from taxation	5. Amount owned in excess of exemption	6. Interest on amount in excess of exemption (enter as item 8)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia.	$	$	All	XXXXXX	XXXXXX
(b) Securities issued under Federal Farm Loan Act, or under such act as amended.			All	XXXXXX	XXXXXX
(c) Liberty 3½% bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States.			All	XXXXXX	XXXXXX
(d) Liberty 4% and 4¼% bonds, Treasury 3¾%, 3¾%, 4%, and 4¼% bonds, Treasury certificates of indebtedness, and Treasury (War) Savings Certificates.			$5,000	$	$
(e) Treasury notes			None		

25 SCHEDULE F.—*Explanation of deduction claimed in items 1, 12, 14, 15, and 16*

Explanation of deduction for depreciation claimed in schedules A and B

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Age when acquired	4. Probable life after acquirement	5. Cost (exclusive of land)	6. Value as of Mar. 1, 1913 (exclusive of land)	Amount of depreciation charged off	
						7. Previous years	8. This year
2 Frame buildings	7-1-25	New		$7,400	$	$544.95	$370
1 brick building	4-1-25	New		8,000		180.00	240
Vending machines	3-1-25	New		18,000		6,266.60	3,600

Explanation of deduction for losses by fire, storm, etc., claimed in schedule A, and in item 13

1. Kind of property	2. Date acquired	3. Cost	4. Value as of Mar. 1, 1913	5. Subsequent improvements	6. Depreciation allowable since acquisition	7. Insurance and salvage value	8. Deductible loss
		$	$	$	$	$	$

Government's exhibit no. 2

1/25-32 L. M. J.

UNITED STATES OF AMERICA

(Coat of arms)

TREASURY DEPARTMENT,
Washington, January 21, 1930.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of individual income tax return of 1928, filed by Harry Murdock, Nameoki, Illinois, the originals of which are on file in this Department.

26 In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary:

F. A. BIRGFELD,
F. A. Birgfeld,
[SEAL] *Chief Clerk, Treasury Department.*

FIELD AUDIT

Individual income tax return for net incomes from salaries or wages of more than $5,000 or incomes, regardless of amount, from business, profession, rents, or sale of property for calendar year 1928.

File this return with the Collector of Internal Revenue for your district on or before March 15, 1929.
(Print name and address plainly below.)
Name: Harry Murdock.
Street and number or rural route: Nameoki Madison County, Illinois.
Occupation, profession, or business: Real estate and vending machines.

(Auditor's Stamp)

Book 273		Do not write in these spaces.
Tax	$5, 920. 44	File Code 255
Penalty	2, 960. 22	Serial number 301363.
Interest	227. 65	(Cashier's stamp)
		Paid Mar. 16, 1929
		Cash, check, M.O., Cert. of Ind.
Total	$	First Payment, $262.53.
Basis OA or RAR RAR		Carded as ———
Audited by E:aj		
Nov. 1929		

1. Are you a citizen or resident of the United States? Yes.
2. If you filed a return for 1927, to what collector's office was it sent? Eighth District Illinois.
3. Is this a joint return of husband and wife? No.
4. State name of husband or wife if a separate return was made, and the collector's office where it was sent. ———.
27 5. Were you married and living with husband or wife on the last day of your taxable year? No.
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? ———.
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change. ———.
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief suport from you on the last day of your taxable year? ———.

Income

Item and Instruction No.	Amount received	Expenses paid (Explain in Schedule F)	
1. Salaries, Wages, Commissions, etc. (State name and address of person from whom received)			
———	$———	$———	$———
———	———	———	———
———	———	———	———
2. Income from business or profession (from schedule A)			9, 312. 95
3. Interest on bank deposits, notes, corporation bonds, etc. (except interest upon which a tax was paid at source)			3, 639. 73
(a) Interest on tax-free covenant bonds upon which a tax was paid at source			———
4. Income from partnerships. (State name and address) Maryland Real Estate Co			7, 939. 47
(a) Income from fiduciaries. (State name and address)			———
5. Rents and royalties. (From schedule B)			413. 95
6. Profit from sale of real estate, stocks, bonds, etc. (From schedule C)			4, 763. 19
28 7. Dividends on stock of domestic corporations			———
8. Taxable interest on liberty bonds, etc. (From schedule E)			———
9. Other income (including dividends received on stock of foreign corporations). (State nature of income)			
(a)			———
(b)			———
10. Total income in items 1 to 9			$26, 069. 29

DEDUCTIONS

11. Interest paid	$3,136.25	
12. Taxes paid. (Explain in schedule F)	643.00	
13. Losses by fire, storm, etc. (Explain in table on page 2)		
14. Bad debts. (Explain in schedule F)		
15. Contributions. (Explain in schedule F)		
16. Other deductions authorized by law. (Explain in schedule F) subdivision expenses	907.59	
17. Total deductions in items 11 to 16		$4,686.84
18. Net income (item 10 minus item 17)		21,382.45

EARNED INCOME CREDIT

19. Earned net income (not over $30,000)	5,000.00
20. Less personal exemption and credit for dependents (see instruction 20)	1,500.00
21. Balance (item 19 minus item 20)	3,500.00
22. Amount taxable at 1½% (not over the first $4,000 of item 21)	
23. Amount taxable at 3% (not over the second $4,000 of item 21)	
24. Amount taxable at 5% (balance over $8,000 of item 21)	
25. Normal tax (1½% of item 22)	
29 26. Normal tax (3% of item 23)	
27. Normal tax (5% of item 24)	
28. Surtax on item 19 (see Instruction 21)	
29. Tax on earned net income (total of items 25, 26, 27, and 28)	52.50
30. Credit of 25% of item 29 (not over 25% of items 28, 42, 43, and 44)	13.12

Computation of tax (see instruction 21)

31. Net income (item 18 above)		$21,382.45
32. Less dividends (item 7 above)	$	
33. Interest on Liberty bonds, etc. (item 8)		
34. Credit for dependents		
35. Personal exemption	1,500.00	
36. Total of items 32, 33, 34, and 35		1,500.00
37. Balance (item 31 minus item 36)		19,882.45
38. Amount taxable at 1½% (not over the first $4,000 of item 37)		4,000.00
39. Balance (item 37 minus item 38)		15,882.45
40. Amount taxable at 3% (not over the second $4,000 of item 37)		4,000.00
41. Amount taxable at 5% (balance over $8,000 of item 37)		11,882.45
42. Normal tax (1½% of item 38)		60.00
43. Normal tax (3% of item 40)		120.00
44. Normal tax (5% of item 41)		594.12
45. Surtax on item 18 (see instruction 21)		289.12
46. Tax on net income (total of items 42, 43, 44, and 45)		1,063.24
47. Adjustment for capital gain or loss (12½% of column 9, schedule D)		
48. Total of or difference between items 46 and 47		1,063.24
49. Less credit of 25% of tax on earned net income (item 30)		13.12
50. Total tax (item 48 minus item 49)		1,050.12

51. Less income tax paid at source _____
52. Income and profits taxes paid to a foreign country or United States possession _____
53. Balance of tax (item 50 minus items 51 and 52) _____

Affidavit

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year as stated, pursuant to the Revenue Act of 1928, and the regulations issued under authority thereof.

_____

Sworn to and subscribed before me this 14 day of March 1929.

HARRY MURDOCK
(Signature of individual or agent)

_____
(Address of agent)

HERMAN F. KREIPKE,
(Signature of officer administering oath)

[NOTARIAL SEAL] *Notary Public.*
(Title)

(An amended return must be marked "Amended" at top of return; checks and drafts will be accepted only if payable at par).

SCHEDULE A.—*Income from business or profession (see instruction 2)*

1. Total receipts from business or profession (state kind of business)		$52,598.82
COST OF GOODS SOLD		
2. Labor	$	
3. Material and supplies		
4. Merchandise bought for sale		
5. Other costs (itemize below or on separate sheet)		
6. Plus inventory at beginning of year		
7. Total (lines 2 to 6, inclusive)	$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 minus line 8)		

NOTE.—Enter "C" or "CM" on lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

OTHER BUSINESS DEDUCTIONS

10. Salaries, exclusive of "Labor," reported on line 2 (do not deduct compensation for your own services)	$28,175.14	
11. Interest on business indebtedness to others		
12. Taxes on business and business property		
13. Losses (explain in table provided therefor at foot of page)	2,000.00	
14. Bad debts arising from sales or services		
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)	5,400.00	
16. Rent, repairs, and other expenses (itemized below or on separate sheet)	7,710.73	
17. Total (lines 10 to 16, inclusive)	43,285.87	
18. Total deductions (line 9 plus line 17)		$43,285.87
19. Net profit (line 1 minus line 18) (enter as item 2)		9,312.95

Explanation of deductions claimed on lines 5 and 16 gasoline and oils and garage rent, $3,470.53; repairs and parts to vending machines, $4,240.20.

32 SCHEDULE B.—*Income from rents and royalties (see instruction 5)*

1. Kind of property	2. Amount received	3. Cost	4. Value as of Mar. 1, 1913	5. Depreciation (explain in table at foot of page)	6. Repairs	7. Other expenses (itemize below)	8. Net profit (enter as item 5)
2 frame buildings	$850.00			$370.00	$81.05		$398.95
1 brick sold 7-1-28	390.00			120.00	180.00	$75.00	15.00
							413.95

Explanation of deductions claimed in Column 7 _____

SCHEDULE C.—*Profit from sale of real estate, stocks, bonds, etc. (See instruction 6)*

1. Kind of property	2. Date acquired	3. Amount received	4. Depreciation allowable since acquisition	5. Cost	6. Value as of Mar. 1, 1913	7. Subsequent improvements	8. Net profit (enter as item 6)
Sale property	4-1-1925	$15,000.00	$540.00	$12,479.00	$	$	$3,061.00
Completed sales subdivision		21,440.00		19,971.88			1,468.12
Installment sales ($63,013.89 cost)		58,048.98 (profit)		4,964.91 (payments 1928)		$3,000.00 (07.8%)	234.07
							$4,763.19

State how property was acquired _____

33 SCHEDULE D.—*Capital net gain or loss from sale of assets held more than two years* (see instruction 6a)

1. Kind of property	2. Date acquired			3. Date sold			4. Amount received	5. Depreciation allowable since acquisition	6. Cost	7. Value as of Mar. 1, 1913	8. Subsequent improvements, and capital deductions	9. Net gain or loss (enter 12½% as item 49)
	Mo.	Day	Year	Mo.	Day	Year						
							$	$	$	$	$	$

State how property was acquired _____

SCHEDULE E.—*Interest on Liberty bonds and other obligations or securities* (see instruction 8)

1. Obligations or securities	2. Interest received or accrued	3. Amount owned	4. Principal amount exempt from taxation	5. Amount owned in excess of exemption	6. Interest on amount in excess of exemption (enter as item 8)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	XXXXX	XXXXX
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended			All	XXXXX	XXXXX
(c) Liberty 3½% Bonds and other obligations of United States issued on or before Sept. 1, 1917, and obligations of possessions of the United States			All	XXXXX	XXXXX
(d) Liberty 4% and 4¼% Bonds, Treasury 3¾%, 3¾%, 4% and 4¼% Bonds, Treasury Certificates of Indebtedness, and Treasury Savings Certificates			$5,000	$	$
(e) Treasury Notes			None		

34 SCHEDULE F.—*Explanation of deductions claimed in items 1, 12, 14, 15 and 16*

Explanation of deduction for depreciation claimed in schedules A and B

1. Kind of property (if buildings, state material of which constructed)	2. Date acquired	3. Age when acquired	4. Probable life after acquirement	5. Cost (exclusive of land)	6. Value as of Mar. 1, 1913 (exclusive of land)	Amount of depreciation charged off	
						7. Previous years	8. This year
2 frame buildings	7-1-1925			$7,400.00	$	$914.95	$370.00
Vending machines	3-1-1925					9,866.60	5,400.00

Explanation of deduction for losses by fire, storm, etc., claimed in schedule A, and in item 13

1. Kind of property	2. Date acquired	3. Cost	4. Value as of Mar. 1, 1913	5. Subsequent improvements	6. Depreciation allowable since acquisition	7. Insurance and salvage value	8. Deductible loss
Vending machines	1-5-1928	$2,500.00	$	$	$500.00	Stolen	$2,000.00

John R. Kirk was called as a witness on behalf of the United States and testified as follows, to-wit:

I live in Springfield, Illinois, and have been internal revenue agent in charge, of the income tax unit, of the Springfield division, about five years and a half. Have been in the service since August 15,

1918. Have known Harry Murdock, defendant, since approximately January 9, 1930.

Q. Mr. Kirk, representing the United States, and particularly the Commissioner of Internal Revenue, have you ever had any dealings or transactions with Mr. Murdock?

A. I have.

Mr. BURKE. Now, we object to that question and move that the answer be excluded because it calls for the conclusion of
35 the witness as to whom he was representing. He can state the facts, if the court please, as to what he did and said.

The COURT. He asked if he ever had any dealings with him. He may answer that.

Mr. ALEXANDER. Well, I asked him if, as a representative of the Commissioner of Internal Revenue——

The COURT. In his official capacity. Proceed. Answer.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

The WITNESS. I did.

Robert H. Lucas, whose name is signed to the document marked "Government Exhibit Number 3", at the date thereof, was Commissioner of Internal Revenue of the United States of America.

Objection by defendant on the ground that it is not the way to prove the official character of a person, and not the best evidence of his official character, which objection was overruled to which ruling defendant by his counsel then and there accepted.

Robert H. Lucas was Commissioner approximately a year after the date of this letter. I think it was handed to me in Washington on December 20, 1929.

Pursuant to that letter I issued a summons, Government Exhibit Number 4. My signature appears upon Government Exhibits Number 4 and 5. They were issued in accordance with the instructions contained in Exhibit Number 3.

The place and date of hearing were changed from Springfield, Illinois, December 30, 1929, to Edwardsville, Illinois, on January 9, 1930, by agreement with George H. Moore, attorney representing Mr. Murdock.

Hezzie J. White was called as a witness on behalf of the Government and testified as follows, to wit:

I live in East St. Louis, Illinois and am an internal revenue agent in the employ of the field agent's office. Mr. John R. Kirk is my immediate superior.

I served Government Exhibits 4 and 5 on Mr. Harry Murdock, the defendant in this case.

Mr. BANDY. The service of the subpoena is admitted.

The COURT. Let the record show it is admitted that the summonses were served or the subpoenaes were served upon the defendant at the time stated, December 27, 1929.

36 John R. Kirk, recalled on behalf of the Government for further examination testified as follows, to wit:

There were present at the hearing at Edwardsville, on January 9, 1930, Mr. George H. Moore, the attorney for Mr. Murdock, Mr. Dwight Green, attorney for the Government and Miss Conlon, the stenographer who took the testimony.

Mr. ALEXANDER. What was the nature of the information which you desired to obtain from the defendant, Harry Murdock by means of the two subpoenaes which you have identified and by means of that meeting?

(Objection by counsel for the defendant on the ground that the subpoenaes sets forth the purpose for which the defendant was summoned and the transcript will show what the agent attempted to elicit from Mr. Murdock, and such witness should not be permitted to place his conclusion upon the purpose of that meeting.)

The COURT. Well, he is the man who called it: this is the man who called it.

Mr. BANDY. But whatever was asked of the defendant could be ascertained only by an examination of the questions asked and the answers or lack of answers that were given.

The COURT. Well, let him proceed with this line of examination for the present. Proceed.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

The WITNESS. We desired to ascertain from Mr. Murdock the names of the parties to whom he had paid the moneys referred to, during the years 1927 and 1928, in order that we might determine whether or not those parties had properly accounted for these moneys for income tax purposes.

Objection by counsel for the defendant and motion that the answer be stricken and the jury be instructed to disregard it, because it is immaterial what this particular witness desired and because he does not make clear who desired it when he says " we desired ".

The COURT. The motion will be denied for the present. Proceed.

(To which ruling of the court the defendant by his counsel duly accepted.)

The WITNESS. When I say we desire, I mean myself as representing the Commissioner of Internal Revenue.

37 (Objection by the defendant to the last part of the answer and motion that it be stricken.)

The COURT. I take it he means by his answer to say that he was there in his official capacity. Is that what you intended to say?

(Witness nods his head in the affirmative.)

Mr. ALEXANDER. Speak up so the reporter can get it, Mr. Kirk.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

A. R. Waterbury was called as a witness on behalf of the Government and testified as follows, to wit:

I live in Kansas City, Missouri, and am employed as a special agent, Bureau of Internal Revenue. Have been so employed seven years, and have been in the employ of the United States twenty-eight years.

I have known the defendant, Harry Murdock, since September 19, 1929.

Government exhibit number 1 is the return we had under investigation at that time with Mr. Harry Murdock. Harry Murdock, whose name appears there, is the defendant in this case.

Government exhibit number 2 is Mr. Murdock's return for 1928 and is one of the returns we had under investigation at the time of the meeting.

There were present at that time Herman F. Kreipke, an accountant of East St. Louis; M. S. Keyes, internal-revenue agent; and Thomas Maher, another internal-revenue agent, who were cooperating with me in that investigation.

Q. Now, did you on that occasion have any conversation with Mr. Murdock?

The COURT. I take it this is preliminary to the hearing, wasn't it?

Mr. ALEXANDER. Exactly.

Mr. BANDY. But in being preliminary, it is inadmissible because it is apparently for the purpose of, by circuitous methods, doing something that they can not do directly.

Mr. ALEXANDER. Not at all.

Mr. BANDY. Whatever he said or didn't say at some other time and place is wholly immaterial to the charge in this indictment.

The COURT. Why isn't that true?

38 Mr. ALEXANDER. There is a question of willfulness here, and that is why I think it is material.

The COURT. Objection overruled. Proceed.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

The WITNESS. I did.

Mr. ALEXANDER. Will you state what was said by you in that connection, and what was said by Mr. Murdock on that occasion?

The WITNESS. I asked him—well, preliminary to that Mr. Murdock asked why Mr. Keys hadn't come to him for the information which he had been obtaining from various parties in Madison County. He stated that if he had come to him he would have given him the information. And I spoke up and said "Well, Mr. Murdock, that is just what we are here for, for information; and if you are ready to divulge the information will you tell us to whom you paid twenty-four thousand dollars in 1927 and 1928?"

Mr. BURKE. Now, if the Court please, here is the offense charged in this indictment: That at a certain specified time and place this defendant refused and failed to give certain information to a cer-

tain designated officer, an officer designated by the Commissioner of Internal Revenue, and the date is specified in that indictment. Now, we are here prepared to try that charge; we are not here prepared to defend a charge of refusal to give information in September 1929, to an entirely different person than the person named in the indictment, a person not shown to have been designated by the Internal Revenue Commissioner, as stated in the indictment. And we therefore object to this testimony because it is incompetent, irrelevant, and immaterial, and does not tend to prove any issue created by this indictment and the plea thereto; and we move that the answer so far given be stricken.

The COURT. I take it that you didn't hear the objection made by your associate counsel. He made precisely the same objection and for the same reasons, and the court overruled the motion. We will have to overrule this one. Proceed.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

The WITNESS. He said "That is commissions." I said "Very well"; will you tell us to whom it was paid?" and he said "I don't remember." I said "Now, you don't expect us to believe that you paid out twenty-four thousand dollars and don't know to whom you paid it?"

39 Mr. BANDY. Now, we object to that part of the answer and ask that the court instruct the jury to disregard it, and that it be stricken from the record.

The COURT. Objection overruled.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

Mr. BANDY. His statement to this witness as to whether he did or did not remember. Now, if the court please, I want to add this additional thought to the objection if permitted: That whether or not information furnished at such a hearing by this defendant was true or false is wholly foreign to the thing at issue here. He is asked to supply information pursuant to a summons. Now, if he gave information at the hearing before the internal revenue agent, Kirk, that is contradicted by information that he had prior to or subsequently given to this witness or someone else, that is wholly immaterial. The falsity or the truth of what was stated by the defendant to that internal revenue agent is not material to this proceeding.

The COURT. You mean at any other time and place?

Mr. ALEXANDER. We are not charging anything false.

The COURT. Let me see that indictment.

(Court examines indictment.)

Mr. ALEXANDER. We are not charging anything of a false nature.

The COURT. Objection overruled. Motion denied.

(To which rulings of the court, the defendant, by his counsel, then and there duly excepted.)

The COURT. And for the benefit of counsel, we might consider the objection made and the motion renewed as to all of this line of testimony.

Mr. BANDY. And——

The COURT. And the motion denied—without doing it every time a question is asked.

Mr. BANDY. And of course, exceptions to the rulings?

The COURT. There will be an exception to every ruling.

Mr. BANDY. Now, if Your Honor please, in the light of that ruling, the defendant asks that a juror be withdrawn and the case continued, because of the injection of this testimony that the defendant considers immaterial, and that he was in no wise apprised of it by the indictment and that he could not in any way anticipate or prepare for, and requires the presence here as a witness for the defendant of this Mr. Kreipke that this witness mentions, and it would be utterly impossible for him to be here today at this trial. We are unprepared to proceed with the trial in this situation.

The COURT. Objection overruled. Motion denied. Proceed.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

Mr. ALEXANDER. Now, will you continue to state what the conversation was?

The WITNESS. After I had stated that—after I had asked him if he expected us to believe that he didn't remember to whom he paid the twenty-four thousand dollars, he said that he would not tell us, that he would pay the tax on that amount. I might state that prior to this——

The COURT. Do you mean that he said he would tell?

The WITNESS. He would not tell to whom he paid it.

The COURT. Wait a minute; you said he would not tell to whom he had paid——

The WITNESS. To whom he had paid the money.

The COURT. Paid the tax?

The WITNESS. To whom he had paid the twenty-four thousand dollars. That he would not tell that, but he would pay the tax on that amount.

The COURT. Proceed.

The WITNESS. Prior to my questioning him I showed him my pocket credentials, which he asked for, and he said "All right; I thought maybe you might be a prohibition agent."

Mr. BANDY. Well, we object to that and ask that that be stricken, Your Honor, because it is wholly immaterial.

The COURT. Let it stand for what it is worth.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

Mr. ALEXANDER. That is all.

The COURT. As a result of that conversation did you do anything?

The WITNESS. Well, as a result of that conversation we concluded——

Mr. BANDY. We object to that answer and ask that it be stricken.

The COURT. Not what you concluded; what you did.

The WITNESS. We continued the investigation without the information.

Mr. BANDY. We object to the last part of the answer—that he did it "without the information", and ask that that be stricken.

41 The COURT. That may be stricken. It may stand that he continued the investigation.

Mr. ALEXANDER. I would like to ask one additional question.

The COURT. All right, go ahead.

Mr. ALEXANDER. Did you make a report of the result of your investigation to anyone?

The WITNESS. I did.

Mr. ALEXANDER. To whom?

Mr. BANDY. We object to that because it would be immaterial under the issues fixed by the indictment and the plea.

The COURT. He may answer.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

The WITNESS. To the Chief of the Intelligence Unit, Washington, D.C.

The COURT. What chief of intelligence unit?

The WITNESS. The Bureau of Internal Revenue has an Intelligence Unit.

The COURT. Well, say so; there are half a dozen of them.

Mr. ALEXANDER. And that unit is a part of the Bureau of Internal Revenue?

The WITNESS. Yes, sir.

Mr. ALEXANDER. That is all.

Mr. BANDY. That is all.

Mr. BURKE. Motion to strike all of the testimony of this witness with respect to conversations with the defendant in September 1929, on the grounds already stated in the objection.

The COURT. Motion denied. Call your next.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

Mathew S. Keyes was called as a witness on behalf of the Government and testified as follows, to wit:

I live in Quiney, Illinois, and have been engaged as an internal revenue agent since 1918. Am acquainted with the defendant Harry Murdock. I remember the occasion, September 17, 1929, when Mr. Waterbury had a conversation with Mr. Murdock in the office of Mr. Kreipke, in East St. Louis.

42 Mr. BANDY. Apparently, if the court please, this is the same conversation that was described by the witness Waterbury.

Mr. ALEXANDER. It is.

Mr. BANDY. Is it understood that the same objections are made by the defendant?

The COURT. If you wish, we may consider the same objections extended to the entire testimony of this witness as to this conversation.

Mr. BANDY. Yes, sir.

The COURT. Same motions made, and same rulings.

(To which rulings of the court, the defendant, by his counsel, then and there duly excepted.)

We met to carry on an investigation of the income-tax liability of Mr. Murdock. Mr. Waterbury was present, Mr. Maher, Mr. Kreipke, and myself. Mr. Murdock had met Mr. Waterbury and before being introduced looked over at me and made the remark that he thought I was a gentleman. I replied that I thought I was, and he asked me why I didn't come to him for information instead of running around asking all of the preachers—using vile names—for information about him. At that Mr. Waterbury interrupted and stated if he was willing to cooperate with the Government that he was going to ask him at that time what certain payments made in the book of Mr. Murdock meant. The entries in there of two thousand dollars each month for twelve months in each of the years 1927 and 1928. Mr. Murdock told Mr. Waterbury that he did not remember what they were for. Mr. Murdock said "You cannot expect us to believe that you paid that much money."

Mr. ALEXANDER. Did you make any report to anyone of this occurrence?

A report was made in the regular course of our reports that we make in all cases to Mr. John R. Kirk, at Springfield.

Cross examination

I did not report to Mr. Kirk, in Springfield, that Mr. Murdock was willing to pay any tax on these deductions that we were inquiring about there. Mr. Murdock told Mr. Waterbury that he was willing to pay any tax that might be computed on that money that we were asking about. I reported it to Mr. Kirk, but not in the report.

43 I did not report to Mr. Kirk that Mr. Murdock had said that he was willing to pay any tax that might be computed on that money that we were asking about.

The COURT. Let the record show the same motion on behalf of the defendant. Motion denied.

(To which ruling of the court the defendant, by his counsel, then and there duly excepted.)

Cecelia M. Conlon was called as a witness on behalf of the Government, and testified as follows, to wit:

I have lived in Springfield, Illinois, all my life and am employed by Mr. John R. Kirk, internal-revenue agent in charge, at Springfield, Illinois. I was so employed on January 9, 1930, and was in Edwardsville, Illinois, on that occasion in connection with my official duties. I attended the hearing on that date at which Mr. Harry Murdock, the defendant in this case, Mr. John R. Kirk, Mr. George

Moore, and Mr. Dwight Green were present. I kept a record on what occurred at that meeting and have those notes. I took them in shorthand and transcribed them.

Government exhibit number 6 is the original copy of the memorandum of the hearing that is transcribed from my notes of the hearing at Edwardsville in regard to Mr. Murdock's income-tax case. I truly and correctly transcribed my shorthand notes and this exhibit correctly and truly shows what was said by the various men who were present at that meeting.

Mr. ALEXANDER. We offer Government exhibit 6.

Whereupon the prosecution offered in evidence Government exhibit 3.

Objection of the defendant on the ground that there has not been any evidence introduced to show any authority upon the part of the Commissioner of Internal Revenue at Washington to issue such a paper as this, which the witness has referred to as a "designation" to him, which objection was overruled, to which ruling defendant, by his counsel, then and there duly excepted.

Whereupon the prosecution offered in evidence Government exhibit 4 and 5, being the two subpenas and the returns thereof, to which there was no objection.

The said Government exhibit number 3, 4, and 5 are in words and figures following, to wit:

44 *Government exhibit number three*

TREASURY DEPARTMENT,
Washington, Dec. 20, 29.

Office of Commissioner of Internal Revenue.

Address reply to Commissioner of Internal Revenue and refer to GC:P:TMT A-239950.

Mr. JOHN R. KIRK,
Internal Revenue Agent in Charge,
Springfield, Illinois.

In re: Harry Murdock, Nameoki, Illinois

By virtue of the authority vested in me by section 1104 of the Revenue Act of 1926 and section 618 of the Revenue Act of 1928, you are hereby authorized to require the attendance of the above-named individual and to take his testimony in connection with matters arising under the internal-revenue laws and to require him to produce any books, papers, records, or memoranda for examination in connection with such matters.

ROBT. H. LUCAS, *Commissioner.*

45 *Government exhibit number four*

Treasury Department, U.S. Internal Revenue. Form 860.

Summons to appear, to testify, and to produce books, etc.

In the matter of Harry Murdock, 8th internal-revenue collection district of Illinois, for the year 1927.

Received Springfield division Dec. 30, 1929, internal-revenue agent in charge.

The Commissioner of Internal Revenue To Harry Murdock, Residing at Nameoki, Illinois, Greeting:

You are hereby summoned and required to appear before the undersigned internal-revenue agent in charge, 303½ East Monroe Street, Springfield, Illinois, on the 30th day of December 1929, at 10:00 o'clock in the forenoon, to give testimony with reference to the following matter and to bring with you all of your books and papers, not previously examined by the agents of the Bureau of Internal Revenue, concerning the same, to wit:

Referring to your income-tax return for the calendar year 1927, sworn to by yourself and filed with the collector of internal revenue for the eighth internal revenue collection district of Illinois, and referring also to section 256 of the Revenue Act of 1926, requiring information at the source with reference to payments by you of $1,500.00 or more in certain cases, and of $3,500.00 or more in other cases, to persons required by law to pay income taxes upon moneys so paid to them by you, and referring further, to section 1104 of the Revenue Act of 1926, authorizing the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, by any officer or employee of the Bureau of Internal Revenue, to require the attendance of any person having knowledge in the premises, and take his testimony with reference to the matter required by law to be included in such return, the above request is made.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States for
46 the district in which you reside, to compel your attendance, testimony, and production of books, etc., and/or to indictment under section 1114 (a) of the Revenue Act of 1926.

Witness my hand this 23rd day of December 1929.

JOHN R. KIRK,
U. S. Internal Revenue Agent in Charge.

Delivered at 2:30 P.M. Dec. 27, 1929.

H. J. WHITE,
Internal Revenue Agent.
NICK G. ZIESER,
Internal Revenue Agent.

15760—33——3

Government exhibit number five

Treasury Department, U.S. Internal Revenue. Form 860.

Summons to appear, to testify, and to produce books, etc.

In the matter of Harry Murdock, 8th internal-revenue collection district of Illinois, for the year 1928.

Received Springfield Division Dec. 30, 1929, internal revenue agent in charge.

The Commissioner of Internal Revenue To Harry Murdock, Residing at Nameoki, Illinois, Greeting:

You are hereby summoned and required to appear before the undersigned internal-revenue agent in charge, at 303½ East Monroe Street, Springfield, Illinois, on the 30th day of December 1929, at 10:00 o'clock in the forenoon to give testimony with reference to the following matter and to bring with you all of your books and papers, not previously examined by the agents of the Bureau of Internal Revenue, concerning the same to wit:

Referring to your income-tax return for the calendar year 1928, sworn to by yourself, and filed with the collector of internal revenue for the eighth internal revenue collection district of Illinois, and especially to schedule A (income from business or profession), item 10, "Salaries, exclusive of 'labor,' reported on line 2
47 (Do not deduct compensation for your own services), $28,-175.14", and referring also to section 148 of the Revenue Act of 1928, requiring information at the source with reference to payments by you of $1,500.00 or more in certain cases, and of $3,500.00 or more in other cases, to persons required by law to pay income taxes upon moneys so paid to them by you, and referring, further, to section 618 of the Revenue Act of 1928, authorizing the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, or by any officer or employee of the Bureau of Internal Revenue, to require the attendance of any person having knowledge in the premises, and take his testimony with reference to the matter required by law to be included in such return, the above request is made.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States for the district in which you reside, to compel your attendance, testimony, and pro-

duction of books, etc., and/or to indictment under section 146 (a) of the Revenue Act of 1928.

Witness my hand this 23rd day of December 1929.

JOHN R. KIRK,
U.S. Internal Revenue Agent in Charge.

Delivered at 2:30 p.m. Dec. 2, 1929.

H. J. WHITE,
Internal Revenue Agent.
NICK G. ZIESER,
Internal Revenue Agent.

(On the reverse side of each of Government exhibits four and five (form 860), appears the following:)

Excerpts from Revenue Act of 1918

SEC. 1305. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having
48 knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SEC. 1318. That if any person is summoned under this act to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

Excerpts from Revenue Act of 1921

SEC. 1308. That the Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oath to such person or persons.

SEC. 1310. (a) That if any person is summoned under this act to appear, to testify, or to produce books, papers, or other data, the

district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

Mr. ALEXANDER. Six, as I understand it, has already been admitted. We want to offer to read the exhibits to the jury or have an understanding that they will go to the jury.

Mr. BANDY. The defendant asks that the transcript exhibit be read. The argument to the jury will be unintelligible without that.

The COURT. You can read it to the jury.

Whereupon Government exhibit number 6 was read to the jury, the same being in words and figures following, to wit:

49 *Government exhibit number six*

Mr. KIRK. This meeting held at Edwardsville, Madison County, Illinois, at 2:30 p.m. on January 9, 1930, is in response by Harry Murdock, Nameoki, Illinois, to a summons served on him at 2:30 p.m., December 27, 1929, by Internal Revenue Agents Hezie J. White and Nick G. Zieser.

Mr. MOORE. Q. I would like to be furnished with a copy of the memorandum of this hearing.

Mr. GREEN. A. You will be furnished with a copy.

Mr. KIRK. Mr. Murdock, before proceeding any further with this hearing I will administer the following oath to you:

Q. "Do you solemnly swear that the testimony you shall give in the matter now on hearing will be the truth, the whole truth, and nothing but the truth, so help you God?"

Mr. MURDOCK. A. Yes; I do.

Mr. MOORE. Q. What is the purpose of this investigation, and what is it proposed to investigate?

Mr. KIRK. A. As stated in the summonses, we are asking Mr. Murdock to supply information in connection with certain moneys which are a factor in determining the income-tax liability of certain individuals, or which may be a factor in determining whether or not such parties have paid the amount of income tax due the Government for certain years.

Mr. MOORE. As I understand it, this summons stated that it was an investigation of the income-tax returns of Mr. Murdock for the years 1927 and 1928. In that connection I would like to state that Mr. Murdock is anxious to cooperate with the officials in every way that he possibly can to the end that the Government should receive every penny of the tax to which it may be entitled; state further that in making up his income-tax returns for the years 1927 and 1928, Mr. Murdock employed an accountant to make up his income-tax returns for those years, gave to him the information regarding his income and the deductions he supposed he was entitled to claim; that the accountant employed by him made up his returns and certain payments amounting to $12,000.00 in each of those years that he

deemed were deductible items he took advantage of; that in 1927 there was $12,000.00 that he thought he was entitled to deduct and he erroneously failed to include that amount in the return in setting up the gross income, and when he made out his return for 1928 he determined that he handled it improperly in 1927 and included this $12,000.00 item in the gross income and claimed it as a deductible item claiming the benefit of it as a deduction. Mr. Murdock had his returns made up by an accountant, and the same accountant made up the return for Mr. Murdock's associate, Mr. Oscar Shookmann, and this $12,000.00 item that I mentioned in connection with Mr. Murdock's return was half of a total of $24,000.00 in payments made by the two partners, Murdock & Shookmann, and that amount the taxpayer, in this case Mr. Murdock, desires to waive any claim to the benefit of it and is willing to have the $12,000.00 item included in his gross income for each year 1927 and 1928 without making any claim for any deduction as to that amount. Further, in connection with that, I desire to say that while these gentlemen made their individual returns that they did not make a partnership return, which they should have made, and I desire to offer at this time for the purpose of getting this matter in good shape as possible to cause them to make the information return as partners so as to set out all facts clearly, and also if the Internal Revenue Bureau desires it, have Mr. Murdock file an amended return for the year 1927 so as to show the inclusion of this amount which was deducted before the return was made in the year 1927.

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Q. Do you desire to have them file those returns, Mr. Kirk?

Mr. KIRK. A. If those returns are required, Mr. Moore, I think they should be filed even though they are delinquent returns. There has been some doubt in my mind as to whether or not a partnership existed. That is a question that was never satisfactorily cleared up during the original examination.

Mr. MURDOCK. It could have been if we knew the agents were looking for the partnership books.

Mr. MOORE. Mr. Murdock states that his books show a monthly division between him and his partner.

Mr. KIRK. The hearing had is not for the purpose of determining Mr. Murdock's income tax liability solely. The summonses which were issued called upon Mr. Murdock to furnish certain information regarding certain moneys paid to others.

Mr. MOORE. Mr. Murdock stands perfectly willing to furnish all such information as he can in respect to any payments that he may have made, but it is my understanding that he is summoned here to investigate his returns as to his income in regard to certain items which he deducted, and I wish to show in the record that he waives claim to those deductions and in view of his waiver I desire to have the record show an objection to any further examination of the taxpayer.

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Mr. KIRK. The summonses do not raise the question as to whether or not these items are proper deductions to Mr. Murdock, but asks that he advise the names of the people to whom these payments were made and the amounts.

Mr. MOORE. Q. Into what amounts do you inquire into, Mr. Kirk?

Mr. KIRK. A. The one specific item to which I refer is the $24,000.00 a year paid to other parties by Mr. Murdock, or by Mr. Murdock and Mr. Shookmann as partners, if you wish to consider that a partnership existed and that these payments were made by the partnership.

Mr. MOORE. In the manner in which these returns were made up there may be some confusion as to the payments in question. In the year 1927 there were certain payments made to employees and these payments Mr. Murdock claims the benefit of one-half of each payment. The other half was claimed by his partner, Mr. Shookmann. These payments are as follows:

For the year 1927:

James Tolton, Nameoki, Illinois, $4,412.05. A married man.

Tom White, Collinsville, Illinois, $3,502.95. Also married.

Wm. Ostendorf, Nameoki, Illinois, $2,845.00. A married man.

John Garner, Nameoki, Illinois, $1,780.00. A married man, I think.

For the year 1928:

James Tolton, Nameoki, Illinois, $5,090.85.

Tom White, Collinsville, Ill., $3,710.00.

Harry Lentz, Nameoki, Illinois, $3,034.40.

Wm. Ostendorf, Nameoki, Illinois, $2,682.13.

George Stearns, Nameoki, Illinois, $775.00.

This taxpayer did not know that a detailed report of such disbursements was required by the internal-revenue authorities until said detailed report was recently requested of him by the revenue agent, Mr. Kirk. He has referred such request to his attorneys for investigation, and his attorneys find that form 1099 and accompanying affidavit required on form 1096 require a statement of all disbursements made in operating a business and does not provide a method whereby the report can be made in cases where if made the taxpayer making same would be compelled to give information which would tend to incriminate and degrade and might tend to lay him liable for prosecution for criminal offenses, for imprisonment, fines, penalties, and forfeitures, and that notwithstanding the Constitution of the United States protects the taxpayer to the extent that it will not require him to give information against himself touching such matters or that may form a link in a chain of circumstances that might be used as evidence against the person giving same, the form requires such information to be given apparently, that is the form does not make any distinction between information that is not incriminating and information that is incriminating or may be such. The taxpayer is willing to prepare and execute

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form 1099 giving the names of persons and amounts paid to them respectively, who are engaged in actually assisting taxpayer in operating his business, and this information has just been furnished heretofore in this statement, and as to other disbursements made in the operation of his business which taxpayer can not give without tending to incriminate and degrade himself, taxpayer is willing to let such amounts be restored to taxable income if the internal revenue authorities believe they were not proper business deductions.

Mr. GREEN. Q. I would like to ask Mr. Moore at this time whether he has criminal prosecution under State law or whether criminal prosecution under Federal law in mind in arriving at the opinion he has just stated?

Mr. MOORE. I do not think I am required to answer that.

Mr. GREEN. I am not asking you to speak for Mr. Murdock; I am asking you to speak for yourself.

Mr. MOORE. I doubt if they have a right to require me to point out which particular law he might put himself liable, to a State law, or to a Federal law, or whether it might be both.

Mr. GREEN. Q. Is your answer that you do not wish to state? I can not tell exactly just what you are saying.

Mr. MOORE. I do not believe that you have the right to require me to answer whether I think that his answers might tend to incriminate him under the Federal law, or that they might tend to incriminate him under both Federal and State laws, and at this time
53 I do not believe that the taxpayer could be required as a witness to state as to what law he thought it might incriminate him.

Mr. GREEN. That is a question which would have to be settled at some other place other than a hearing at this time, but I would like to have this record show at this time what your answer is to my question as to whether you had violation of a State law or violation of a Federal law in arriving at the opinion you have just rendered.

Mr. MOORE. A. I think I would state that we have particularly in mind a State law.

Mr. GREEN. Q. Now, I would like to ask if the accountant who prepared Mr. Murdock's individual returns for the years 1927 and 1928 is present at this hearing?

Mr. MOORE. A. Yes, Mr. Kreipke.

Mr. GREEN. Mr. Murdock, before you are asked any questions at this hearing, I want to make it clear to you that the purpose of this hearing is not to determine your personal income tax liability for the years 1927 and 1928, but that the Government seeks at this hearing to have you give information with reference to payments of moneys made by you to persons, in order that the Government may determine whether those persons have correctly reported their income for the years 1927 and 1928 and paid the tax thereon, or if no return has been filed by those persons, to prepare and make out a return as provided by the Statute of the United States for such persons, and

before any questions are asked you, we deem it advisable to call your attention to certain Statutes of the United States under which the Government proceeding at this hearing. As you are probabaly aware, the Revenue Act of 1926 applies to the year 1927 and the Revenue Act of 1928, together with such sections of the Revenue Act of 1926 as were not repealed by that act, apply to the year 1928. The sections of those two acts which apply to this particular hearing are as follows, and I will first read section 256 of the Revenue Act of 1926:

"All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits and income (other than payments described in sections 254 and 255), of $1,500 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having
54 information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

"Such returns may be required, regardless of amounts, (1) in the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, and (2) in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by persons undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

"When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

"The provisions of this section shall not apply to the payment of interest on obligations of the United States.".

Another section of the 1926 act, which applies to this hearing reads as follows, and is section 1104:

"The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in

the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons."

Another section of the 1926 revenue law which applies to this hearing is section 1114 (a), which is a penalty section of the revenue act, and reads as follows:

"Any person required under this act to pay any tax, or required by law or regulations made under authority thereof to make a
55 return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution."

Those, I believe, are all of the sections of the 1926 Revenue Act which apply directly to this hearing. Those sections of the Revenue Act of 1928 which are deemed to apply to this hearing are: Section 148, which is in identical language, I believe, to section 256 of the Revenue Act of 1926, regarding the filing of returns showing payments of $1,500 or more to any person; and section 618 of the Revenue Act of 1928, which is in identical language to that of section 1104 of the Revenue Act of 1926, which empowers the Commissioner through any agent or person designated by him to conduct a hearing similar to the one now being conducted, and requiring the persons so summoned to give information; and also, section 146 of the 1928 Revenue Act which is in identical language with that of section 1114 (a) of the Revenue Act of 1926.

A. Will you state your name please, Mr. Murdock?

Mr. MURDOCK. A. Harry Murdock.

Mr. GREEN. Q. Where do you live?

Mr. MURDOCK. A. Nameoki, Illinois.

Mr. GREEN. Q. How old are you?

Mr. MURDOCK. A. Forty-seven.

Mr. GREEN. Q. Has your home always been in Nameoki, Illinois?

Mr. MURDOCK. A. No, sir.

Mr. GREEN. Q. Where did you live prior to the time you came to Nameoki?

Mr. MURDOCK. A. East St. Louis.

Mr. GREEN. Q. How long have you lived in Nameoki?

Mr. MURDOCK. A. About eight years.

Mr. GREEN. Q. What has been your business there?

Mr. MURDOCK. A. Real estate for the last two years.

Mr. GREEN. Q. Have you just been in real estate business the last two years?

Mr. MURDOCK. A. Yes, sir.

Mr. GREEN. Q. You mean by that the years 1928 and 1929?
56 Mr. MURDOCK. A. Well, I started in 1926.
Mr. GREEN. Q. Then you have been in real estate business three years.
Mr. MURDOCK. A. About that.
Mr. GREEN. Q. Has that been your only business?
Mr. MURDOCK. A. I refuse to answer.
Q. On what ground?
A. On the ground that I might give information that might incriminate and degrade myself.
Q. Do you have in mind the violation of a Federal law or State law when you state your ground in that you might give information to incriminate or degrade yourself?
A. Against a State law.
Q. And not against a Federal law? Is that right, Mr. Murdock?
A. Not that I know of.
Mr. MOORE. I object to that question on the ground that it is immaterial; that the Government has no right to insist upon an answer as to what would be a State or Federal statute in connection with which the witness might tend to incriminate himself.
Mr. GREEN. Q. Mr. Murdock, did you operate or have supervision over the operation of any slot machines, coin-operated machines, during the years 1927 and 1928?
Mr. MURDOCK. A. Vending machines.
Q. You mean gambling machines?
A. I think that's what they are called.
Q. How many machines did you have in operation during the years 1927 and 1928?
A. I can't tell you off-handed.
Q. Approximately?
A. Around 125 or something like that.
Q. In both years?
A. Yes, about the same amount.
Q. In what territory were those machines operated?
A. Madison County.
Q. Madison County alone?
A. Yes.
Q. What towns in Madison County?
A. I refuse to answer.
Q. On what ground?
A. That I might incriminate or degrade myself.
Q. And in stating you refuse to answer that you might
57 incriminate or degrade yourself, you have in mind the violation of a State Law and not a Federal Law?
A. Yes.
Mr. GREEN. Q. You could not operate those machines without the consent of certain public officials, could you Mr. Murdock?
Mr. MURDOCK. A. It has been done.

Q. Where was it done without the consent of public officials?

A. It has been done other places.

Q. Is it being done now without the consent of public officials?

Mr. MOORE. I object to that question as being too broad in its scope, as it is not particular enough in its inquiry.

Mr. GREEN. All right, strike out that question.

Q. Mr. Murdock, are you at the present time operating any slot machines without the consent of public officials?

Mr. MURDOCK. A. I refuse to answer.

Q. On what ground?

A. That I might give information which might incriminate or degrade myself.

Q. And in stating that you refuse to answer because you might give information which might incriminate or degrade yourself, you have in mind the violation of a State law and not a Federal law?

A. Yes.

Q. In 1927, Mr. Murdock, were you operating slot machines without the consent of public officials?

A. I refuse to answer.

Q. On what ground?

A. Same ground.

Q. Please state the ground.

A. That I might give information which might incriminate or degrade myself.

Q. And in refusing to answer on the ground that you might incriminate or degrade yourself you have in mind the violation of a State law and not a Federal law, Mr. Murdock, is that right?

A. Yes.

Q. Did you in 1928 operate slot machines without the consent of public officials?

A. I refuse to answer.

Q. On what ground.

A. On the same ground.

58 Q. Please state the ground.

A. That I might incriminate or degrade myself.

Q. And in refusing to answer on the ground that you might incriminate or degrade yourself, you have in mind the violation of a State law and not a Federal law?

A. Yes.

Mr. GREEN. Your returns for the years 1927 and 1928 were made out by Mr. Kreipke, who is present at this hearing?

Q. You gave him the information from which he made up the returns?

Mr. MURDOCK. A. Yes, sir.

Q. Did Mr. Kreipke to your knowledge gain any information with respect to making up your returns for the years 1927 and 1928 from any source other than yourself?

A. I don't think he did.

Q. Mr. Murdock, it appears that Mr. Kreipke in making out your return for the year 1927 did not include in the item of gross income which was set forth on your 1927 return, an amount of $24,000.00, and it appears from his working papers in connection with your 1927 return and which he used in making up your return that the $24,000.00 was paid by you to persons as commissions. To whom did you pay that $24,000.00?

A. I refuse to answer.

Q. On what ground?

A. Same ground. It might incriminate myself.

Q. In stating the ground for your refusal to answer you have in mind the violation of a State law and not the violation of a Federal law?

A. Yes, sir.

Q. Out of that sum of $24,000.00 did you pay $1,500.00 or more to any one single person during the year 1927?

A. I refuse to answer.

Q. On what ground?

A. I only made one half of the payments.

Q. Well, out of $12,000.00 which you say you paid, did you pay $1,500.00 or more to any one single person during the year 1927?

A. I refuse to answer.

Q. On what ground?

A. I refuse because it might incriminate or degrade myself.

Q. Now, out of the $24,000.00 paid in the year 1927, or the
59 $12,000.00 which you say was your share which you paid, did you pay $3,500.00 or more to a married person during the year 1927?

A. I refuse to answer.

Q. On what ground?

A. I might give information to incriminate or degrade myself.

Q. In stating your ground for refusal that you might incriminate or degrade yourself you have in mind the violation of a State law and not the violation of a Federal law?

A. Yes.

Mr. GREEN. Q. Mr. Murdock, in the return you filed for yourself for the year 1928 there appeared in schedule A of that return, "Total income from business or profession", and also a notation, "Do not deduct compensation for your own services"; an amount of $28,175.14. Is there included in that sum or amount of $28,175.14 an amount of $24,000.00 which has been referred to at this hearing as being the amount of commissions or salaries paid to certain persons by a partnership consisting of Mr. Shookmann and yourself, or the amount of $12,000.00 which your counsel has stated was the amount paid by yourself during the year 1928?

Mr. MURDOCK. A. $12,000.00.

Q. Well, is not the total amount of $24,000.00 included in that figure of $28,175.14?

Mr. MOORE. He has answered the question by stating $12,000.00.

Mr. GREEN. You did not file any partnership return for either the year 1927 or 1928?

Mr. MOORE. He has stated $12,000.00, and your statement stated that the total payment is $24,000.00, and $12,000.00 was all that was paid by him.

Mr. GREEN. Mr. Murdock, your attorney, Mr. Moore, read certain figures here and the names of persons to whom the amounts of money were paid making up this money which totalled $15,292.38. Were the amounts making up that total included in the total of $28,175.14 appearing in your return for the year 1928 under schedule A, "Income from business or profession?"

Mr. MURDOCK. A. Half of the total of $15,292.38 is included in the figure $28,175.14.

Q. According to my figures, then the total of $7,646.19 is included in the figure of $28,175.14 appearing under schedule
60 A, "Income from business or profession", in your return for the year 1928. Is that right, Mr. Murdock?

A. I think it is.

Q. Mr. Murdock, according to the figures which have been given here, you have, through your attorney, Mr. Moore, accounted for the payment of $7,646.19, that being one half of $15,292.38, which appears in the record here. Now, that leaves a balance of that figure of $28,175.14 of $20,528.95 to be accounted for. To whom did you pay that money?

A. I refuse to answer.

Q. On what ground?

A. I might incriminate or degrade myself.

Q. And in stating that your ground for refusal to answer is that you might incriminate or degrade yourself you have in mind the violation of a State law and not the violation of a Federal law? Is that right?

A. Yes, sir.

Mr. MOORE. There is an item of $9,350.00 that is included in that deduction as a matter of incidental expenses without classification that was expended by Mr. Murdock himself in connection with the business in which he was engaged.

Mr. GREEN. Q. Was that expended in connection with your slot-machine business or real-estate business?

Mr. MURDOCK. Slot-machine business. That was spent by me in going around with my customers trying to find locations for their machines.

Mr. MOORE. Q. What sort of expense was that, Mr. Murdock?

Mr. MURDOCK. A. A man running my business cannot walk into a soft-drink parlor without buying the house a couple of drinks.

Mr. GREEN. Did you keep a record of these expenditures?

Mr. MURDOCK. A. Yes, sir.

Mr. GREEN. Q. And by buying a drink for the "house" you mean for whoever was in there?

Mr. MURDOCK. A. Yes, sir.

Q. That is what you might call the promotion of "Good will?"

A. Yes, sir.

Mr. KIRK. Q. Mr. Murdock, I believe it is your statement that included in the sum of $28,175.14 deducted on your return in the year 1928 is an item of one half of $12,000.00 of the $24,000.00
61 annual payment which has been referred to; that is, one half of this amount was deducted on your return and one half on the return of Mr. Shookmann. There has been submitted an amount of $7,646.19 as representing your one half of amounts paid to certain individuals in 1928. Do you mean to state that this amount of $15,292.38 is a portion and all included in the $24,000.00?

Mr. MURDOCK. A. No.

Q. Mr. Murdock, I will ask you as to the $24,000.00 paid during the year 1928 and of the $24,000.00 paid during the year 1927, by the firm of yourself and Mr. Shookmann, to state the names of the recipients and amounts paid to each.

A. I refuse to answer.

Mr. GREEN. Q. On what ground?

Mr. MURDOCK. A. I might incriminate or degrade myself.

Mr. GREEN. Q. And in stating your ground for refusal to answer that you might incriminate or degrade yourself, you have in mind the violation of a State law and not the violation of a Federal law?

Mr. MURDOCK. A. Yes, sir.

Q. Now, Mr. Murdock, there seems to be some discrepancy in the figures which have been mentioned here, and for the purpose of clearing the record let us again state those figures. Out of the total of $28,175.14 you show and wish to account for a part of that total in this manner, namely: $7,646.19, which represents your half of certain payments made to individuals, whose names and amounts were read into the record here by your attorney, Mr. Moore. That is right so far, is it?

Mr. MURDOCK. A. Yes.

Q. And for the sum of $8,529.00, which represents half of a total of $17,058.00, paid by yourself and your partner, Mr. Shookmann, as miscellaneous expenses such as buying of drinks in a prospective customer's place. That accounts for $16,175.19 out of the figure of $28,175.14. Is that right?

A. That is right.

Q. As to the balance, which is approximately $11,999.95 you wish to go on record as refusing to state the names of the persons or recipients of that money or the amounts paid such persons?

A. Yes, sir.

Q. And you refuse to answer on the ground that such answer may tend to incriminate or degrade you?

A. Yes.

62 Q. Mr. Murdock, do you know a man by the name of George Little?

A. Yes.

Q. How long have you known him?

A. Fifteen years.

Q. Do you know what business he is in?

A. No; I do not.

Q. Has your association with him been of a social or business nature?

A. Social.

Q. Have you ever had any business transactions with George Little?

A. I refuse to answer.

Q. On what ground?

A. Same ground.

Q. Please state the ground.

A. I might incriminate myself.

Q. In stating that your ground for refusal to answer is that you might incriminate yourself, you have in mind the violation of a State law and not the violation of a Federal law?

A. Yes, sir.

Mr. GREEN. Q. Out of the sum of $12,000.00 which you say you paid in the year 1927 and for which you refuse to account for and refuse to reveal the names of the recipients and amounts paid to such recipients, did you pay any of that $12,000.00 to George Little?

Mr. MURDOCK. A. I refuse to answer.

Q. On what ground?

A. I might incriminate myself.

Q. Out of the sum of $12,000.00 which you say you paid during the year 1928 and for which you refuse to account for with respect to which you refuse to give or reveal the names of the recipients or amounts paid such recipients, did you pay any of that $12,000.00 to George Little?

A. I refuse to answer.

Q. On what ground?

A. I might give information that might incriminate myself.

Q. In stating your ground for refusal to answer that you might give information that might incriminate yourself, you have in mind the violation of a State law and not the violation of a Federal law?

63 A. Yes.

Q. Have you any questions which you might wish to ask at this time, Mr. Moore?

Mr. MOORE. I have no questions that I desire to ask.

Motion to exclude testimony

Mr. BURKE. Now, if the court please, we move to exclude all of the testimony relating to the questions propounded and answers made by the defendant at the alleged hearing or meeting at Edwardsville, Ill., on January 9, 1930, for the reason that the same neither

proves nor tends to prove the commission by the defendant of any offense against any valid law of the United States, and more specifically we assign the ground that section 1104 of the Revenue Act of 1926 (title 26, sec. 1247 U.S.C.) and section 618 of the Revenue Act of 1928 (the identical section appearing in the Revenue Act of 1926) under which the said hearing was had, neither in themselves nor by reference to any other statute of the United States, contain any provision for immunity to a person testifying by virtue thereof, from prosecution by reason of such testimony, and that by reason of such omission and deficiency the said statutes are violative of the provisions of the fifth amendment to the Constitution of the United States, and that the said sections are unconstitutional and void.

The COURT. That is section 618?

Mr. BURKE. Now, then, I assume that the same objection to section 1114 (a) under which the indictment is drawn is saved; of course, that will be saved upon the motion for a directed verdict.

The COURT. Section 1114 (a) of the Revenue Act of 1926 and section 146 (a) of the Revenue Act of 1928, are section 2146 of title 26, U.S.C.

Mr. BANDY. The objection does not go to the offer of proof or the form of it, but to the materiality of the testimony—that is, the form in which it is offered, as to the stenographic report; we will concede that is proper.

The COURT. The jury may be at ease three or four minutes. (Jury retires with the officer.)

This motion involves the precise question that the Government and counsel for the defendant sought to raise by the special pleading method, and which the Supreme Court of the United States
64 held was improper, and reversed the holding heretofore made by this court. And therefore the motion is denied.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

(After a short recess, the jury returns into court.)

The COURT. Call your next witness.

Mr. ALEXANDER. The Government rests.

The COURT. Evidence closed on behalf of the Government.

Defendant's motion for directed verdict

Mr. BANDY. We have a motion for a directed verdict at the close of the Government's case.

The COURT. Motion by the defendant at the close of the Government's evidence to instruct the jury to return the following verdict: "We, the jury, find the defendant not guilty." Motion denied.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

Mr. BANDY. Now, the defendant will offer no evidence. Defendant rests. And we have another motion to direct.

The COURT. Defendant rests. At the close of all of the evidence, Defendant Murdock moves the court to instruct the jury to return the following verdict in this case: "We, the jury, find the defendant not guilty." Motion denied.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

The foregoing is all the evidence offered or introduced by either party upon the trial of said cause.

Charge to jury

The COURT. Gentlemen of the jury, when you retire to your jury room, the court will permit you to take with you the indictment in this case. You will be permitted to take the indictment with you for one purpose and one purpose only, and that is that you may accurately inform yourselves as to nature and character of the several charges laid against the defendant. The indictment is not evidence and will not be considered as evidence by you.

The first count of the indictment charges that the defendant wilfully refused to give testimony and information concerning his income tax return. The other count is in similar form and is
65 substantially to the same effect, with the difference concerning the name and address or the names and addresses of the recipient or recipients of such payments, that is, of the twelve thousand dollar payments which you have heard discussed.

Gentlemen of the jury, to this indictment the defendant had heretofore entered his plea of not guilty.

This prosecution is based upon two statutes, the first being section 1247 of title 26 of the United States Code: "Examination of books, papers, and records; taking testimony. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons."

The other statute is section 2146 of title 26 of the United States Code, which provides that "Any person required under this title to pay any tax, or required by law or regulations made under authority hereof to make a return, keep any records, or supply any information for the purposes of the computation, assessment or collection of any tax imposed by this title, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the

time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof" shall be punished. I interpolate the words "shall be punished" for the words contained in the statute for the reason that you are in no way concerned with any matter of punishment. Any question of punishment is a matter that devolves upon the court. You have no duty and no responsibility in connection with such matters except to advise the court as to the ultimate fact as to whether the defendant is guilty in manner and form as charged in the indictment or in some count thereof, or not guilty.

66 Gentlemen of the jury, you will begin the consideration of this case by giving this defendant the benefit of the presumption of innocence and, of course, that presumption obtains throughout the trial and is to find crystalization in a verdict of not guilty, unless you find from the evidence that he is guilty in manner and form as charged in the indictment or some count thereof beyond a reasonable doubt. Then proof to that extent overcomes the presumption of innocence.

You will observe that the offense charged here is the willful failure or refusal to furnish information. That means, gentlement of the jury, that having an opportunity to do so he deliberately designed not to furnish the information.

In the evidence before you and in the discussions by counsel, you have heard much about incrimination or self-incrimination; and in the testimony that was taken before the revenue agent the defendant here refused to answer questions because to do so might incriminate or degrade him, particularly under the State law. In fact, there is one place in the evidence where he expressly says that he refuses to answer because to do so might incriminate him under the State law. You are instructed, gentlemen of the jury, that he had no right to interpose that objection to the giving of the information which it was sought to have him give to the agent.

Gentlemen of the jury, there is only one question here for you to decide, and that is whether or not this defendant willfully refused to give information which the Government sought to secure from him. Now, if he did so refuse and if you should so find from the evidence, he is guilty. If he did not, he is not guilty.

So far as the facts are concerned in this case, gentlemen of the jury, I want to instruct you that whatever the court may say as to the facts is only the court's view. You are at liberty to entirely disregard it. The court feels from the evidence in this case that the Government has sustained the burden cast upon it by the law and has proved that this defendant is guilty in manner and form as charged beyond a reasonable doubt. If you don't think so, then you should find him not guilty. That is your privilege. If you do think so, then that is the end of the case and your verdict will be one of not guilty.

Is there any suggestion on behalf of the Government?

Mr. LEMON. In the last sentence, Your Honor, I think you made a little mistake; you said they should find him "not guilty."

The COURT. Well, so that there will be no mistake about
67 that—I may have misspoken myself: If you think that the Government has proved that the defendant willfully refused to give information, as charged in the indictment, beyond a reasonable doubt, then your verdict would be "guilty"; if you believe from the evidence that the Government has not proved that he willfully refused to give information, as charged in the indictment, then your verdict would be "not guilty." Any further suggestion?

Mr. LEMON. None.

The COURT. Any suggestion on behalf of the defendant?

Mr. BURKE. We suggest that the court instruct the jury that before they can find the defendant guilty of the charge in this indictment they must find beyond a reasonable doubt not only that he did willfully refuse to give information, but that that information which he refused to give was material to the assessment, computation, or collection of income taxes—that that must be proved as an essential element of the offense, and beyond a reasonable doubt.

The COURT. The jury may consider itself so instructed. Is there anything else?

Mr. BANDY. The defendant also suggests and asks the court to give an instruction to the effect that if you believe that the reasons stated by the defendant in his refusal to answer questions were given in good faith and based upon his actual belief, that they should consider that in determining whether or not his refusal to answer the questions was willful.

The COURT. That request will be refused.

(To which ruling of the court, the defendant, by his counsel, then and there duly excepted.)

Mr. BANDY. That is the only suggestion.

The COURT. As to the form of your verdict——

Mr. BANDY. We have some exceptions.

The COURT. To what?

Mr. BANDY. To that part of the charge in which the court said that he feels from the evidence in this case that the Government has met the burden placed upon it and has proved the defendant guilty beyond a reasonable doubt, as being an unfair and an unreasonable usurpation of the province of the jury in this case.

The COURT. You may have the exception.

Mr. BURKE. We desire to further except to that part of the
68 court's charge in which the court advises the jury that the defendant had no right to refuse to answer on the ground that he might incriminate himself, particularly under the State law. We desire an exception to that part.

The COURT. You may have an exception to that part. Anything else?

Mr. BANDY. That is all.

The COURT. Gentlemen of the jury, it is possible to render any one of three verdicts in this case. If you find the defendant guilty, you will say "We, the jury, find the defendant," writing in his name, "guilty"; sign your verdict and return it into court. If you find the defendant not guilty, you will say: "We, the jury, find the defendant"—writing in his name "not guilty"; sign your verdict and return it into court.

If you should find him guilty on one count and not guilty on the other, you will say "We, the jury, find the defendant"—writing in his name—"guilty on count" whatever it may be, putting in the number of the count, "and not guilty on count number" whatever it may be. You will know that the first count is the first count because it is not numbered; the second count is numbered. So that if you should find him guilty on one count and not guilty on the other this third form will be of assistance to you.

Upon retiring to your jury room you will select one of your number to preside at your deliberations; he will be your foreman and will speak for you and in your presence in communicating with the court.

You may now retire with the officer, take with you the forms of verdict which are furnished for your assistance—not your direction—the indictment, and the exhibits admitted for your consideration, and begin your deliberations.

All exhibits were admitted, weren't they?

Mr. ALEXANDER. I understand so.

Mr. BANDY. I think so.

Verdict

Whereupon the jury retired to consider their verdict and returned thereafter, into court with a verdict in the words and figures as follows, to-wit:

"We, the jury, find the defendant, Harry Murdock guilty."

69 *Motion for new trial*

Whereupon the defendant moved the court for a new trial of said cause for the following reasons:

1. The court erred in permitting the prosecution to prove by Witnesses A. R. Waterbury and Matthew S. Keys, over the objection of this defendant, that on September 19, 1929, at East St. Louis, Illinois, the defendant stated to said witnesses in a conversation that he did not remember what had been done with the items of income involved in this case. This testimony was incompetent, immaterial, irrelevant, and highly prejudicial to the rights of defendant. There was no duty devolving upon the defendant to give any information to the said revenue agents at that time and place and, if it be true that he refused their request for such information at that time, he violated no statute in so doing.

2. The court erred, and defendant was unduly prejudiced, by the giving of a certain part of the charge to the jury in which the court stated that the court believed that the evidence had proved the defendant guilty beyond a reasonable doubt. This part of the charge to the jury constituted an unreasonable and unwarranted invasion by the court of the province of the jury, and caused the court to substitute its judgment for the judgment of the jury upon the ultimate question of fact which it was the jury's sole province to determine.

3. The defendant was prejudiced and error was committed through the refusal of the court to grant the request of the defendant to instruct the jury that if defendant's refusal to answer certain questions or to give information at the time he appeared before Internal Revenue Agent Kirk at Edwardsville, Illinois, was in good faith and was not a willful failure or refusal to give information, that fact should be considered by the jury in determining whether the failure or refusal of the defendant was willful.

4. The court erred in overruling the demurrer to the indictment because the indictment is predicated upon an invalid statute that violates that provision of the fifth amendment to the Constitution which provides that "No person shall be compelled in any criminal case to be a witness against himself."

5. The court erred in overruling the demurrer to the
70 indictment because the indictment is based upon an invalid statute, the said statute being invalid and in violation of the fifth amendment to the Constitution because, although undertaking to compel the witness to divulge information, it does not confer immunity from criminal prosecution upon such person because of the facts divulged through such compulsory testimony.

6. The court erred in admitting in evidence, over defendant's objection, exhibits which purported to be photographic copies of defendant's income-tax returns for the year 1927 and 1928. These exhibits were inadmissible because they were not the best evidence and because the original income-tax returns made by defendant for the years 1927 and 1928 were in the possession of the Government. These returns, and the facts stated in them, were also inadmissible because, although defendant was required by law to file these income-tax returns, the law did not confer immunity upon him from criminal prosecution because of the facts divulged by any statements in the said returns.

7. The court erred in denying defendant's request at the close of the evidence for the court to instruct the jury to find the defendant not guilty.

And for other good and sufficient reasons.

Said motion for the new trial was denied, to which ruling the defendant, by his counsel, then and there excepted.

Motion in arrest of judgment

Thereupon the defendant moved the court to arrest judgment upon the said verdict for the following reasons:

1. Section 1114-A of the Revenue Act of 1926, upon which count one of the indictment is predicated, and section 146-A of the Revenue Act of 1928, upon which count two of the indictment is based, are invalid and in violation of the fifth amendment to the Constitution of the United States because these sections leave the defendant subject to prosecution after being compelled to answer incriminating questions propounded to him by the internal revenue agent.

2. Section 1114-A of the Revenue Act of 1926 and section 146-A of the Internal Revenue Act of 1928, upon which acts of Congress the counts of this indictment are based, are invalid and in vio-
71 lation of the fifth amendment to the Constitution of the United States because they do not give complete protection from the perils against which the said fifth amendment was intended to guard.

3. The fifth amendment to the Constitution of the United States provides that "no person shall be compelled in any criminal case to be a witness against himself." Section 1114-A of the Internal Revenue Act of 1926 and section 146-A of the Revenue Act of 1928 violate this provision of the fifth amendment to the Constitution of the United States because they do not afford complete immunity against future prosecution for any offenses revealed by answers given by the defendant to the questions that were asked of him when he was subpoenaed to appear before the internal revenue agent as alleged in counts one and two of the indictment.

4. Each count of the indictment violates the sixth amendment to the Constitution of the United States in that each of said counts fails to inform the defendant of the nature and cause of the accusation.

5. The indictment is fatally defective and insufficient, including each count thereof, in that it does not allege the commission of any offense against the United States.

6. Each count of the indictment fails to inform the defendant of the nature and cause of the accusation in that each count fails and omits to aver what, if any, information was requested of defendant, and what, if any, questions were propounded to him.

7. The indictment, including each count thereof, is fatally insufficient because it consists only of conclusions and does not allege any facts on which the predicate the conclusions it states.

8. The averment in each of the counts of the indictment that the defendant "unlawfully did wilfully fail to give such testimony" is a mere conclusion of the pleader that this defendant is not, by law, required to answer.

9. The indictment is otherwise vague, ambiguous, argumentative, indefinite and uncertain.

Said motion was overruled by the court, to which ruling the defendant, by his counsel then and there excepted.

Thereupon the court rendered its judgment and sentence upon said verdict, which judgment and sentence is as follows, to-wit:

That the defendant pay a fine of five thousand dollars and be imprisoned for one year in the Springfield city prison.

72 To the rendition and imposition of which judgment and sentence the defendant, by his counsel then and there excepted.

And the court entered an order allowing the said defendant thirty days to present and file bill of exceptions in said cause.

Order settling bill of exceptions

Forasmuch as the matters, above set forth do not fully appear in the record, the defendant, Harry Murdock, tenders this, his bill of exceptions, and prays that the same may be signed and approved by the judge of this court.

The foregoing bill of exceptions was presented to the undersigned and lodged in the office of the clerk of this court on the 12th day of February, A. D. 1932, and within the time allowed by the said United States District Court therefor, contains all the evidence given and proceedings had upon the trial of said cause and is in all respects correct, and is hereby approved, allowed and settled, and made a part of the record herein.

Dated February 16th, 1932.

LOUIS FITZHENRY, *Judge.*

Presented, February 12, 1932.

LOUIS FITZHENRY, *Judge.*

Lodged in Clerk's office this 12th day of February, 1932.

S. T. BURNETT, *Clerk.*

[File endorsement omitted.]

In United States District Court

Petition for appeal and supersedeas

Filed Jan. 29, 1932

To the Honorable Louis FitzHenry, Judge of the above court:

Harry Murdock, the defendant in the above-entitled cause,

73 hereby petitions for the allowance of an appeal from the judgment of conviction herein, to the United States Circuit Court of Appeals for the Seventh Circuit, and prays that an order may be made superseding the execution of said judgment pending said appeal, on the execution of a bond in a sum to be fixed herein, and conditioned according to law, and that your petitioner be released on bail in an amount to be fixed by the order of this Honorable Court, pending the final disposition of said appeal.

HAROLD J. BANDY,
EDMUND BURKE,
Attorneys for Defendant.

In United States District Court

Appellant's assignment of errors

Filed Jan. 29, 1932

Comes now Harry Murdock, above-named appellant, by Edmund Burke and H. J. Bandy, his attorneys, and avers that there is manifest error in the record and proceeding in the above-entitled cause, in this:

1. The court erred in denying appellant's motion for a new trial and in entering judgment upon the verdict because the indictment and the prosecution in this case are predicated upon certain statutes, to wit, section 1114 A of the Revenue Act of 1926 and section 146 A of the Revenue Act of 1928, which are invalid and in violation of the Fifth Amendment to the Constitution of the United States which provides that "No person shall be compelled in any criminal case to be a witness against himself."

2. The court erred in overruling and denying appellant's motion in arrest of judgment because the statutes upon which the two counts of this indictment are based, to wit, section 1114 A of the Revenue Act of 1926 and section 146 A of the Revenue Act of 1928, are invalid and in violation of the Fifth Amendment to the Constitution of the United States because, although compelling appellant to give
75 testimony and information under oath in a certain hearing before an internal revenue agent at Edwardsville, Illinois, as described in the indictment, these sections of the statute did not afford absolute immunity to appellant against prosecution for criminal offenses divulged or revealed by appellant at said hearing before Internal Revenue Agent Kirk while giving such compulsory information or testimony.

3. The court erred in denying a motion made by appellant during the course of the trial, for the court to exclude and strike from the testimony, the stenographic transcript of the questions asked of appellant and the testimony given by him at the aforesaid hearing before the internal-revenue agent. This stenographic transcript was inadmissible because it violated the above set forth constitutional rights of appellant as guaranteed by the fifth amendment. This stenographic transcript was inadmissible in evidence because the testimony therein was wrung from appellant without him being afforded immunity from criminal prosecution because of any offenses divulged by such testimony.

4. The court erred in overruling the motion for new trial and entering judgment upon the verdict because the indictment in this case does not allege any offense against the United States. It fails to allege any offense because the aforesaid sections 1114 A of the Revenue Act of 1926 and 146 A of the Revenue Act of 1928, are unconstitutional because they leave appellant subject to criminal prose-

cution after he answers the incriminating questions put to him by the internal-revenue agent at the aforesaid hearing.

5. The court erred in overruling appellant's demurrer to the indictment and each count thereof because of the reasons above set forth concerning the invalidity and unconstitutionality of section 1114 A of the Revenue Act of 1926 and section 146 A of the Revenue Act of 1928.

The court erred in overruling and denying appellant's demurrer to the indictment and each count thereof, because each count of said indictment violates the sixth amendment to the Constitution of the United States, by failing and omitting to inform appellant of the nature and cause of the accusation. This is shown by the fact that each count wholly fails and omits to aver what, if any, information was requested of appellant and what, if any, questions were propounded to him.

6. The court erred in entering judgment upon the verdict
75 because the evidence in this case fails to prove that appellant "unlawfully did wilfully fail to give such testimony" as alleged in each count of the indictment. The testimony shows that at the time he refused to reply to certain questions asked of him at said hearing, appellant stated that if he should answer such questions his answers would incriminate and degrade him. His refusal to answer was not deliberate or wilful, but was because of a well founded fear of a criminal prosecution.

7. The court erred in permitting the prosecution to prove by witnesses A. R. Waterbury and Matthew S. Keys, over the objection of appellant, that on September 19, 1929, at East St. Louis, Illinois, appellant stated to said witnesses that he did not remember what he had done with the two (2) twelve thousand dollars ($12,000.00) item of income involved in this case. This testimony was incompetent, immaterial, irrelevant, and highly prejudicial to the rights of appellant. The time, place, and circumstance testified about by the said witnesses was not the time, place, and circumstance charged in the indictment.

8. The court erred in overruling and denying appellant's motion for a directed verdict because the evidence in this case fails to show a willful violation of either section 1114a of the Revenue Act of 1926 or of section 146A of the Revenue Act of 1928 and fails to show any refusal to give information material to the computation, assessment or collection of any tax imposed by either of the said revenue acts.

9. The court improperly instructed the jury, to the prejudice of the defendant, that:

"The court feels from the evidence in this case that the Government has sustained the burden cast upon it by the law and has proved that this defendant is guilty in manner and form as charged beyond a reasonable doubt."

for the reasons set out in the defendant's exception to said instruction.

10. The court erred in refusing, to the prejudice of the defendant, to instruct the jury, upon the request of the defendant, that:

"If you believe that the reasons, stated by the defendant in his refusal to answer questions, were given in good faith and based upon his actual belief, you should consider that in determining whether or not his refusal to answer the questions was willful."

to which refusal the defendant duly excepted.

11. The court improperly instructed the jury, to the prejudice of the defendant, that,

76 "In the evidence before you and in the discussions by counsel, you have heard much about incrimination or self-incrimination; and in the testimony that was taken before the revenue agent the defendant here refused to answer questions because to do so might incriminate or degrade him, particularly under the State law. In fact, there is one place in the evidence where he expressly says that he refuses to answer because to do so might incriminate him under the State law. You are instructed, gentlemen of the jury, that he had no right to interpose that objection to the giving of the information which it was sought to have him give to the agent."

to which charge the defendant duly excepted.

12. The court erred in admitting in evidence over appellant's objection, exhibits which purported to be photostatic copies of appellant's income tax returns for the years 1927 and 1928, being Government exhibits number 1 and 2, to the admission of which evidence the appellant objected and duly excepted. These exhibits were inadmissable because they were not the best evidence and because the originals thereof were in the possession of the Government. They were further inadmissable because foundation therefor was not shown by proof that the originals had been signed or executed by appellant. The exhibits were further inadmissable because the certificate thereon purported to state a fact in addition to the genuineness of the copies, to wit, that the originals were filed by Harry Murdock, Nameoki, Illinois. The said exhibits were inadmissable for the further reason that appellant was required by law to file the originals thereof and the same could not be admissable against him in any criminal prosecution.

13. The court erred in refusing to direct a verdict of "not guilty" because the evidence failed to prove the defendant guilty beyond a reasonable doubt.

Wherefore appellant prays that the judgment of the United States District Court for the Southern District of Illinois, Southern Division, in this case be set aside and held for naught and that said judgment be reversed and remanded.

HAROLD J. BANDY,
EDMUND BURKE,
Attorneys for Appellant.

[File endorsement omitted.]

77–79 In United States District Court

Order for Appeal and Supersedeas

Filed Jan. 29, 1932

The above-named defendant having filed his petition for appeal and supersedeas, together with his assignments of error, and the court having examined same, it is ordered that the defendant be allowed an appeal to the United States Circuit Court of Appeals for the Seventh Circuit and that said appeal shall operate as a supersedeas and that no further proceedings shall be and in this cause in this court until the final determination thereof on said appeal, and that the said Harry Murdock shall be admitted to bail during the pendency of said appeal upon his entering into a good and sufficient bond in the sum of ten thousand ($10,000) dollars, to be conditioned as required by law, with sureties to be approved by the clerk of this court.

Dated this 29 day of January A.D. 1932.

LOUIS FITZHENRY,
District Judge.

[Bond on Appeal for $10,000 approved and filed Jan. 29, 1932, omitted in printing.]

80 In United States District Court

Order extending time

Filed Feb. 24, 1932

This cause having come on to be heard upon the motion of Harry Murdock, defendant, for an extension of the time within which to file a transcript of the record and docket said cause in the United States Circuit Court of Appeals, and the court being fully advised in the premises and for good cause shown, it is ordered that the time for filing a transcript of the record and docketing said cause in the United States Circuit Court of Appeals for the Seventh Circuit, be and the same is hereby extended to and including the 29th day of March 1932.

Dated this 24th day of February 1932.

CHAS. G. BRIGGLE, *Judge.*

O.K.

FRANK K. LEMON,
U.S. Atty.

[File endorsement omitted.]

In United States District Court

Order extending time

Filed March 25, 1932

This cause having come on to be heard upon the motion of Harry Murdock, defendant, for an extension of the time within which to file a transcript of the record and docket said cause in the United States Circuit Court of Appeals, and the court being fully advised in the premises and for good cause shown, it is ordered that the time for filing a transcript of the record and docketing said cause in
81 the United States Circuit Court of Appeals for the Seventh Circuit, be and the same is hereby extended to and including the 28th day of April 1932.

Dated this 25th day of March 1932.

LOUIS FITZHENRY, *Judge.*

O.K.

MARKS ALEXANDER,
Asst. U.S. Atty.

[File endorsement omitted.]

In United States District Court

Praecipe for transcript of record

Filed Feb. 8, 1932

To the clerk of said court:

You are hereby requested to make a transcript of the record in the above entitled cause to be filed in the United States Circuit Court of Appeals for the Seventh Circuit pursuant to an appeal allowed therein, and to include in such transcript of the record the following, to wit:

1. Placita and captions.
2. Indictment and return thereof.
3. Demurrer to indictment filed February 6, 1930, and any and all orders relating thereto.
4. Assignment of additional ground of demurrer filed February 19, 1930, and any and all order relating thereto.
5. Demurrer to indictment filed January 11, 1932, and any and all orders relating thereto.

5a. Plea of not guilty.

6. Original bill of exceptions.
7. Motions for directed verdict and orders relating thereto.
8. Verdict.

9. Motion for new trial and order relating thereto.
10. Motion in arrest of judgment and order relating thereto.
82 11. Judgment and sentence.
12. Petition for appeal.
13. Assignment of errors.
14. Order allowing appeal.
15. Citation and service.
16. Praecipe for transcript of record.
17. Bond.
18. Clerk's certificate.

Said transcript to be prepared as required by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit, and to be filed in the office of the clerk of the said United States Circuit Court of Appeals on or before the 27th day of February 1932 unless such time is enlarged as provided by the rules last above mentioned.

Dated February 8th, 1932.

HAROLD J. BANDY,
EDMUND BURKE,
Attorneys for Appellant.

Service of the above praecipe is accepted and acknowledged this 8th day of February 1932.

FRANK K. LEMON,
United States Attorney, Southern Dist. Ill.

[File endorsement omitted.]

[Clerk's certificate to foregoing transcript omitted in printing.]

83 [Citation in usual form showing service on Frank K. Lemon filed Jan. 29, 1932, omitted in printing.]

84 [Clerk's Certificate to foregoing transcript omitted in printing.]

85 [Caption omitted.]
[Apearances of counsel omitted in printing.]

86

87 [Order setting cause omitted in printing.]

88 [Minute entry of argument and submission, Oct. 5, 1932, omitted in printing.]

89 In United States Circuit Court of Appeals for the Seventh Circuit

No. 4774. October term and session, 1932

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division

HARRY MURDOCK, APPELLANT

vs.

THE UNITED STATES OF AMERICA, APPELLEE

Opinion filed December 7, 1932

Before Alschuler, Evans, and Sparks, circuit judges.

Appellant was tried, convicted, and sentenced for violation of section 1114 (a), Revenue Act of 1926, and section 146 (a), Revenue Act of 1928 (identical provisions), which make it an offense to wilfully fail to supply information sought by the Government under the revenue acts. On appeal from the sentence which followed his conviction, he has assigned as error the court's refusal to direct a verdict in his favor and an instruction given by the court to the jury to the effect that the accused is guilty in the opinion of the court and the refusal to give a requested instruction on the subject of wilfulness.

Evans, circuit judge: The indictment charged appellant with having made income-tax returns for the years 1927 and 1928, in each of which he claimed a deduction of $12,000 for sums paid to individuals whose names, as well as the amounts paid, were not stated; that he was thereupon duly brought before the internal revenue agent at Springfield, Illinois, to give the names and addresses of the recipients of such payments; that although he had full knowledge concerning such matters, he wilfully and unlawfully failed to give such

90 testimony or supply such information. To the charge thus preferred, appellant interposed a special plea averring that, if he answered the questions put to him, he would thereby be unlawfully compelled to furnish incriminating testimony against himself. To this plea the United States demurred. The court overruled the demurrer and entered judgment discharging appellant. From this judgment, the Government appealed to the United States Supreme Court, where the judgment thus entered was reversed. *United States* v. *Murdock*, 284 U.S. 141. The facts, as well as the nature of the controversy, are all stated in that opinion and will not be repeated here. The cause was thereafter tried before a jury, and appellant was convicted. The evidence on this trial supported the allegations of the indictment. Avoidance of the sentence thereafter pronounced is first sought on the ground that the statute, which made the wilful failure to give the testimony sought a criminal offense,

is unconstitutional. The basis of this attack is that the section defining the offense contains no exception which relieves the taxpayer from giving self-incriminating testimony.

Appellant cites no case in support of his argument that this statute is unconstitutional, because his rights under the fifth amendment are not therein protected, and our search of the authorities has been no more productive of results in his favor. That the Government may, in view of the sixteenth amendment, lawfully enact legislation to effectively enforce the assessment and collection of income taxes cannot be doubted. *United States* v. *Murdock*, *supra*. Embraced within such powers are the sections which call for reports and information to be supplied by the taxpayer, in answer to questions propounded by the representative of the Government. The information sought in the instant case was relevant. *United States* v. *Murdock*, *supra*. Courts may not presume that the same authority which is responsible for both the sixteenth and the fifth amendments contemplated that one should nullify the other, but rather intended that each should be read and construed in the light of the other. In other words, legislation enacted pursuant to the sixteenth amendment must be construed in the light of the fifth amendment. *Kentucky Railroad Tax Case*, 115 U.S. 32. In fact, a citizen from whom information is sought under a statute enacted pursuant to authority granted to Congress by the sixteenth amendment may invoke or waive the protection provided by the fifth amendment. And likewise the courts will compel the
91 production of information, subject, however, to the right of said taxpayer to justify his refusal so to do by showing facts that bring him within the protection of the fifth amendment. Thus construed, the statute under consideration is not unconstitutional.

Appellant complains because the court charged the jury:

"So far as the facts are concerned in this case, Gentlemen of the Jury, I want to instruct you that whatever the court may say as to the facts, is only the court's view. You are at liberty to entirely disregard it. The court feels from the evidence in this case, that the Government has sustained the burden cast upon it by the law and has proved that this defendant is guilty in manner and form as charged beyond a reasonable doubt."

In Federal courts the trial judge may comment on the evidence and, if he makes it clear that his opinion is not binding on the jury, express his opinion on all questions in issue, including the guilt or innocence of the accused. Horning v. District of Columbia, 254 U.S. 135; Palno v. U.S., 58 F. (2d) 111; Buchanan v. U.S., 15 F. (2d) 496.

While it is within the power of the court to express an opinion as to the guilt of the accused, we doubt the wisdom of so doing, save in extraordinary cases. It is true the trial court has an important duty to perform in assisting the jury to arrive at a true verdict. There is, however, in practical operation, we fear, considerable danger of the court's substituting its opinion for that of the jury by such an expres-

sion of opinion. It would seem the better practice to comment upon the character of the evidence and, if and when an opinion is expressed, to limit it to a basic fact or an issue involved, upon which the guilt of accused is in part dependent. By so doing, the jury is left to perform its constitutional duty of determining the guilt or innocence of the accused, and at the same time, the court fully meets its very important duty of assisting the jury in reaching an intelligent verdict.

The significance of this suggestion is better appreciated when we consider the next assignment of error, the court's failure to give a proposed instruction, which reads as follows:

"If you believe that the reasons stated by the defendant in his refusal to answer questions were given in good faith and based
92 upon his actual belief, you should consider that in determining whether or not his refusal to answer the questions was wilful."

It is appellant's contention that the jury should have been enlightened on the subject of wilfulness as an element in the crime charged against him, and that it should have been instructed to consider the accused's explanation in determining whether his failure to give information was wilful. The request was a fair one in view of the testimony and the failure of the court in any other part of the charge to speak of this phase of the case.

There was evidence tending to show that appellant's refusal to testify was because of his belief that it would be self-incriminating. The colloquy or argument which occurred between opposing counsel before he made this statement informed him that his right so to do was at least debatable. The precise question, which was one of law, was whether the protection of the fifth amendment extended to self-incrimination against the operation of a State criminal statute. In the then late case of Vajtauer v. Commissioner of Immigration, 273 U.S. 103, 113, the Supreme Court expressly avoided a ruling on that question. Not until this case reached the Supreme Court was it settled "that full and complete immunity against prosecution by the Government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination."

The accused, when he refused to testify, had just heard his counsel assert that his protection under the fifth amendment extended to self-incriminating statements, even though the incrimination arose out of a State criminal statute. He therefore was within his rights in asking that the jury be charged as requested. True, the jury was not obliged to accept as true, his explanation of his refusal to testify; for advice of counsel on such a question is not an absolute defense. A license to practice law does not carry with it the power to grant immunity to one not entitled to it. On the other hand, the issue of wilfulness is ordinarily one of fact. Wilfulness has been defined to mean something more than knowingly. (Felton v. U.S., 96 U.S. 703; Spurr v. U.S., 174 U.S. 734.)

The good faith belief in advice given by a reputable counsel may, and ordinarily will, have a bearing upon the wilfulness of the conduct of a party who follows it. Without advice of counsel
93 even, a witness may claim the protection of the fifth amendment. Whether his asserted claim of protection is in good faith may be disputed, but a jury question is frequently thereby raised. At least in criminal cases, where wilfulness of the accused's conduct is the fact issue, determinative of guilt, and the court has expressed its opinion that the accused is guilty, the accused is entitled to an instruction which directs the jury's attention to his evidence on that issue.

The judgment is reversed, and the cause remanded for a new trial.

94 In United States Circuit Court of Appeals

4774

HARRY MURDOCK

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division

Judgment

Dec. 7, 1932

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Illinois, Southern Division, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby reversed; and that this cause be, and the same is hereby remanded to the said District Court for a new trial.

94a In United States Circuit Court of Appeals

[Title omitted.]

Order extending time

Dec. 23, 1932

On application of Mr. Marks Alexander, counsel for appellee, it is now here ordered that the time for filing the petition for rehearing in this cause be, and the same is hereby extended 10 days.

Note re petition for rehearing

And afterwards, to wit: On the sixth day of January 1933 there was filed in the office of the clerk of this court a petition for rehearing, which said petition for rehearing is not copied here.

Note re answer to petition for rehearing

And afterwards, to wit: On the thirtieth day of January 1933, there was filed in the office of the clerk of this court an answer to the petition for rehearing, which said answer is not copied here.

95 In United States Circuit Court of Appeals

[Title omitted.]

Order denying rehearing

Feb. 22, 1933

It is ordered by the court that the petition for rehearing in this cause be, and the same is hereby denied.

96 [Clerk's certificate to foregoing transcript omitted in printing.]

97 Supreme Court of the United States

Order allowing certiorari

Filed October 9, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is advanced and assigned for argument on Monday, November 6th next, after the cases heretofore assigned for that day.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

97a (Endorsement on cover:) File no. 37,690. U.S. Circuit Court of Appeals, Seventh Circuit. Term no. 88. The United States of America, petitioner, vs. Harry Murdock. Petition for a writ of certiorari and exhibit thereto. Filed May 22, 1933. File no. 88, O.T. 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933